

No. 1225

see briefs in 1223

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA.

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TRANSCRIPT OF RECORD.

Upon Appeal from the Circuit Court of the United
States for the District of Oregon.

INDEX.

	Page
Amended Decree	121
Answer	36
Appearance of Defendant, Praecipe for.....	31
Assignment of Errors	127
Bill of Complaint	3
Bond on Appeal	133
Citation	1
Complaint, Bill of	3
Cost-bill	124
Decree	108
Decree, Amended	121
Certificate, Clerk's, to Transcript	138
Clerk's Certificate to Transcript	138
Opinion	111
Order Allowing Appeal	132
Order Enlarging Time to File Transcript.....	a
Order Extending Time to File Transcript.....	137
Order Extending Time to Plead.....	34

	Page
Petition for Appeal	126
Praecipe for Appearance of Defendant.....	31
Replication	75
Stipulation of Additional Facts.....	102
Stipulation Excepting Certain Lands	106
Stipulation Extending Time to File Transcript....	136
Stipulation Extending Time to Plead (March 23, 1901)	32
Stipulation Extending Time to Plead (May 29, 1901)	33
Stipulation Extending Time to Plead (June 25, 1901)	35
Stipulation of Facts	77
Stipulation of Facts, Stipulation to Correct.....	101
Stipulation Submitting Case	107
Stipulation to Correct Stipulation of Facts.....	101
Subpoena ad Respondendum	29

*In the Circuit Court of the United States, for the District
of Oregon.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,

Defendant.

No. 2657.
July 6th, 1905.

Order Enlarging Time to File Transcript.

Upon stipulation of parties herein by their respective attorneys—

It is ordered that the time of defendant in which to file the transcript on appeal herein in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged thirty days.

JOHN J. DE HAVEN,

Judge.

[Endorsed]: No. 1225. United States Circuit Court of Appeals, for the Ninth Circuit. Oregon and California Railroad Company vs. United States. Order under Rule 16. Filed July 17, 1905. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

UNITED STATES OF AMERICA,

Complainant and Appellee,

vs.

OREGON AND CALIFORNIA RAIL-

ROAD COMPANY,

Defendant and Appellant.

Case No. 2657.

Citation.

To the United States of America, Greeting:

The Oregon and California Railroad Company having, on this day, been granted an order of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree entered on December 12, 1904, decree made and amended and entered herein February 25, 1905, in suit No. 2657, in the Circuit Court of the United States for the District of Oregon, brought by the United States of America as complainant against the said company, and the bond on appeal of the said company having been this day filed and approved.

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on July 9th, 1905, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, on June 9th, 1905.

WM. B. GILBERT,
Judge.

State of Oregon, }
County of Multnomah. } ss.

Due service of the within citation is hereby received at Portland, Oregon, this 9th day of June, 1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, of attorneys for defendant.

WM. W. BANKS,
Assistant United States Attorney, of Attorneys for Complainant.

[Endorsed]: Original. No. 2657. United States Circuit Court of Appeals, Ninth Circuit. United States of America vs. Oregon and California Railroad Company. Citation. United States Circuit Court. Filed June 9, 1905. J. A. Sladen, Clerk.

In the Circuit Court of the United States for the District of Oregon.

October Term, 1900.

Be it remembered, that on the 19th day of February, 1901, there was duly filed in the Circuit Court of the United States for the District of Oregon, a bill of complaint, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

Defendant.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the District of Oregon, Sitting in Equity.

The United States of America by John W. Griggs, its Attorney General brings this its bill of complaint against the Oregon and California Railroad Company, a corporation organized under and by virtue of the laws of the State of Oregon, and a citizen of said State and District, and complaining says:

I.

That the Congress of the United States by an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon," approved July 25th, 1866, authorized such company, organized under the laws of Oregon, as the legislature

of said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the City of Portland, and running thence through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon, there to connect with another railroad authorized in said act to be built in the State of California, and granted to said Oregon Company every alternate section of public lands of the United States, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, ten on each side of said railroad; and when any of said alternate sections, or parts of sections, should be found to have been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof under the direction of the Secretary of the Interior in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first named alternate sections; and as soon as the said company should file in the office of the Secretary of the Interior a map of survey of said railroad, or any portion thereof not less than sixty continuous miles from either terminous, the Secretary of the Interior should withdraw from sale public lands therein granted on each side of said railroad so far as located, and within the limits above specified. And your orator further shows that by joint resolution, adopted October 20th, 1868, of the legislature of the State of Oregon, the Oregon Central Rail-

road Company was designated in accordance with the said last mentioned Act of Congress as capable of receiving and undertaking the privileges, franchises, grants and duties above set forth, and did become the corporation entitled to all the benefits and subject to all the obligations of said Act of Congress, and that on or about April 4th, 1870, the said Oregon and California Railroad Company, a corporation duly organized and existing under the laws of the State of Oregon, became the successor and assign of said Oregon Central Railroad Company.

II.

And your orator would further show unto your Honors, that on the 26th day of March, 1870, the officers of the Oregon and California Railroad Company definitely fixed the line of the first 60 miles of said road authorized by said Act of Congress, and filed a plat thereof in the office of the Commissioner of the General Land Office and presented same to the then Secretary of the Interior showing among other things a route along the line authorized by said Act of Congress, approved July 25th, 1866, and the following described, among other lands in the State of Oregon, were odd-numbered sections or parts of sections of land, not mineral, within the place limits of said proposed line of railroad as designated by said map, viz.:

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 11, T. 39 S., R. 2 E. of the Willamette meridian; Lot 1, Sec. 15, T. 3 S., R. 1 E.; W. $\frac{1}{2}$, S. E. $\frac{1}{4}$, Sec. 9, T. 5 S., R. 1 E.; W. $\frac{1}{2}$, S. E. $\frac{1}{4}$, Sec. 13, T. 6 S., R. 1 E.; S. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$, Sec. 3, T. 2 S., R. 2 E.;

S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 21, T. 4 S., R. 2 E.; Lot 1, Sec. 7, T. 5 S., R. 2 E.; S. W. $\frac{1}{4}$, Sec. 27, T. 1 S., R. 3 E.; S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 35, T. 2 S., R. 3 E.; N. W. $\frac{1}{4}$, Sec. 19, T. 2 S., R. 2 W.; and W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, Sec. 35, T. 9 S., R. 3 W.; N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 9, T. 18 S., R. 5 W.; N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, and W. $\frac{1}{2}$ of Sec. 5, T. 23 S., R. 5 W.; S. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$, and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 3, T. 10 S., R. 6 W.; Lot 8, Sec. 15, T. 23 S., R. 7 W., amounting in all to 1496.96 of acres, all of said lands being situated within the State of Oregon.

III.

And your orator would further show unto your Honors, that on the 16th day of May, 1857, R. Ogle, a duly qualified pre-emptioner under the laws of the United States duly filed his declaratory statement, No. 131, at the Land Office at Oregon City, Oregon, upon Lot 1 in Sec. 15, T. 3 S. of R. 1 E. of the Willamette meridian, with bona fide intention of acquiring title thereto from the United States under the pre-emption laws of the United States; that said lands were at said date public lands of the United States and subject to pre-emption entry; that upon the 25th day of July, 1866 at the time of the passage of the Act aforesaid, and upon the 29th day of June, 1870, at the time of definite location of said railroad, said declaratory statement and filing was in full force and uncanceled; that by the provisions of said land grant said tract of land did not pass to the grantees, but the legal title thereof remained in the United States.

And your orator would further show unto your Honors, that upon the 9th day of May, 1871, the President of the United States through inadvertance, and without knowledge of the adverse claim of the said R. Ogle, issued to the defendant, the Oregon and California Railroad Company, a patent for said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing such patent to defendant, and so your orator avers that the patent to said lands is void and should be so declared, but that said defendant company still claims title to said land under said patent, and withholds said lands from your orator.

IV.

And your orator would further show unto your Honors that upon the 9th day of July, 1879, E. Wells, was a person qualified under the law to acquire lands from the United States by cash entry or otherwise, and that upon the said 9th day of July, 1879, the said E. Wells, duly filed at the local land office within the State of Oregon, cash entry No. 5498, upon the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 11, T. 39 S., R. 2 E. of the Willamette meridian which lands were then public lands of the United States, and subject to sale by cash entry; that upon the 2d day of August, 1883, defendant, the Oregon and California Railroad Company filed its map of definite location with the Commissioner of the General Land Office at Washington, opposite to and coterminous with said tract of land; that by the terms of

the grant to the predecessor of the said Railroad Company of July 25th, 1866. the title to said lands did not pass to the grantee, as such cash entry and was in full force and uncanceled.

And your orator would further show unto your Honors, that upon the 16th day of March, 1896, the President of the United States, without knowledge of the adverse claim of the said E. Wells, issued to the defendant, the Oregon and California Railroad Company, a patent for said tract of land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing a patent to the defendant for the lands herein described under the facts as stated herein, and so your orator avers that said patent to said land is void and should be so declared; that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

V.

And your orator would further show unto your Honors, that upon the 12th day of September, 1867, John E. Perdue, was a person qualified to make homestead entry on public lands under the laws of the United States; that on said 12th day of September, 1867, said John E. Perdue duly filed his homestead entry No. 907, in the proper land office within the State of Oregon, upon the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 9 in T. of R. 1 E. of the Willamette Meridian, that said lands were then public lands of the United States and subject to home-

stead entry; that upon the 29th day of January, 1870, the defendant, the Oregon and California Railroad Company, filed its line of definite location with the Secretary of the Interior under the grant to its predecessor of July 25th, 1866, opposite to and coterminous with the above tract of land, and that at the time of the filing of the said definite line of location the said homestead entry of John E. Perdue was uncanceled and was in full force and effect, and that by reason thereof the title to the said tract of land did not pass to the defendant the Oregon and California Railroad Company under the terms of its said grant.

And your orator would further show unto your Honors that upon the 18th day of June, 1877, the President of the United States without knowledge of the adverse claim of John E. Perdue issued to the defendant the Oregon and California Railroad Company a patent for said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing a patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

VI.

And your orator would further show unto your Honors, that upon the 11th day of September, 1858, I. V.

Willis, was a person qualified under the laws of the United States to acquire title to lands in the United State under the pre-emption laws thereof, and that on the said 11th day of September, 1858, said I. V. Willis, duly filed his declaratory statement No. 431 in the proper land office within the State of Oregon with a bona fide intent to acquire title thereto under the pre-emption laws of the United States to the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 13, T. 6 S., R. 1 E. of the Willamette Meridian, which said land was then and there public lands of the United States and subject to pre-emption entry under the laws thereof; that upon the 29th day of January, 1870, the defendant the Oregon and California Railroad Company filed its line of definite location with the Secretary of the Interior of the United States opposite to and coterminous with said tract of land, but at the time of the filing of the said map the pre-emption filing and entry of the said I. V. Willis was uncanceled and still in full force and effect, and by the terms of the grant of July 25th, 1866, to the predecessor of defendant the title to said land did not pass under said grant but remained in the United States.

And your orator would further show unto your Honors, that upon the 18th day of June, 1877, the President of the United States without knowledge of the adverse claim of I. V. Willis issued to the defendant the Oregon and California Railroad Company a patent to said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and

contrary to law in issuing the patent to the defendant the Oregon and California Railroad Company for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

VII.

And your orator would further show unto your Honors, that upon the 1st day of June, 1859, N. N. Matlock was a duly qualified entryman as a pre-emptioner under the laws of the United States; that on the said 1st day of June, 1859, said N. N. Matlock duly filed at the land office at Oregon City, Oregon, his declaratory statement No. 657, with a bona fide intent then and there to acquire title under the pre-emption laws of the United States to the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 3, T. 2 S., R. 2 E. of the Willamette Meridian, which said tract of land was then and there public lands of the United States and subject to pre-emption entry thereunder; that defendant the Oregon and California Railroad Company filed with the Secretary of the Interior of the United States its map of definite location of line of said road opposite to and coterminous with said tract of land on the 29th day of January, 1870, but that by the terms of the grant to defendant's predecessor the title to said land did not pass thereunder, but remained in the United States.

And your orator would further show unto your Honors, that on the 18th day of June, 1877, the President

of the United States without knowledge of the adverse claim of N. N. Matlock issued to the defendant the Oregon and California Railroad Company a patent for said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing a patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said land is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

VIII.

And your orator would further show unto your Honors, that upon the 5th day of January, 1870, G. J. Trullinger was a duly qualified entryman under the homestead laws of the United States; that on the 5th day of January, 1870, the said G. J. Trullinger duly filed at the land office at Oregon City, Oregon, his homestead entry No. 1427, upon the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 21, T. 4 S., R. 2 E. of the Willamette Meridian, with a bona fide intent to acquire title thereto under the homestead laws of the United States; that said lands were then and there public lands of the United States and subject to entry under the homestead laws of the United States; that the defendant the Oregon and California Railroad Company filed its map of definite location opposite to and coterminous with said lands with the Secretary of the Interior on

the 29th day of January, 1870, but that the title to said lands did not pass to defendant by reason of the terms of the grant to defendant's predecessor of July 25th, 1866, that said title remained in the United States by reason of the facts that at the time of said definite location said homestead entry of G. J. Trullinger was uncanceled and still in full force and effect.

And your orator would further show unto your Honors, that on the 18th day of June, 1877, the President of the United States without knowledge of the adverse claim of G. J. Trullinger, issued to defendant, the Oregon and California Railroad Company a patent for said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing a patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

IX.

And your orator would further show unto your Honors, that on the 28th day of September, 1865, J. J. Dingman was a duly qualified entryman under the homestead laws of the United States; that on the said 28th day of September, 1865, said J. J. Dingman duly filed in the land office at Oregon City, Oregon, his homestead entry No. 323, with the bona fide intent to acquire title from the United States to Lot 1, in Sec. 27, T. 5 S., R.

2 E. of the Willamette Meridian, which said lands were then and there public lands of the United States and subject to homestead entry; that on the 29th day of January, 1870, defendant the Oregon and California Railroad Company filed its map of definite location opposite to and coterminus with said tract of land with the Secretary of the Interior, but that the title to said land did not pass to defendant by the terms of the grant to defendant's predecessor of July 25th, 1866, for the reason that at the time of the filing of said map of definite location said homestead entry of J. J. Dingman was uncanceled and still in full force and effect.

And your orator would further show unto your Honors, that on the 12th day of July, 1871, the President of the United States without knowledge of the adverse claim of J. J. Dingman issued to the defendant the Oregon and California Railroad Company, a patent for said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing a patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

X.

And your orator would further show unto your Honors, that on the 22d day of December, 1866, George W. Dyke was a qualified entryman under the home-

stead laws of the United States; that on the 22d day of December, 1866, George W. Dyke duly filed in the land office at Oregon City, Oregon, his homestead entry No. 764, upon the S. W. $\frac{1}{4}$ of Sec. 27, T. 1 S., R. 3 E., with a bona fide intention of acquiring title to the same under the homestead laws of the United States; that said land was then and there public lands of the United States and subject to homestead entry; that the defendant herein the Oregon and California Railroad Company on the 29th day of January, 1870, filed its map of definite location of said road opposite to and coterminous with the said lands with the Secretary of the Interior, but that the said defendant did not acquire title to the said lands under the grant to its predecessor of July 25th, 1866, but the title thereof under the terms of said grant remained in the United States, that on the said 29th day of January, 1870, said homestead entry was uncanceled and in full force and effect.

And your orator would further show unto your Honors, that on the 18th day of June, 1877, the President of the United States without knowledge of the adverse claim of George W. Dyke issued to defendant the Oregon and California Railroad Company, a patent for said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing a patent to the defendant for the lands described herein under the facts herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant

company still claims title to said lands under said patent and withholds said lands from your orator.

XI.

And your orator would further show unto your Honors, that on the 24th day of May, 1859, S. Fieldhammer was a duly qualified entryman under the pre-emption laws of the United States; that on the 24th day of May, 1859, the said S. Fieldhammer duly filed in the land office at Oregon City, Oregon, his declaratory statement No. 562 upon the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 35, T. 2 S., R. 3 E. of the Willamette Meridian with the bona fide intent to then and there acquire title to the same under the pre-emption laws of the United States; that said land was then and there public lands of the United States and subject to pre-emption entry under the laws thereof; that on the 29th day of January, 1870, defendant the Oregon and California Railroad Company filed with the Secretary of the Interior its map of definite location, opposite to and coterminus with said land, but that the title to said land did not pass under the grant of July 25th, 1866, made to defendant's predecessor, but the title thereof remained in the United States; that at the time of filing of the map of definite location and at the date of the passage of the Act of July 25th, 1866, said pre-emption entry of said S. Fieldhammer was uncanceled and still in full force and effect.

And your orator would further show unto your Honors, that on the 29th day of May, 1871, the Presi-

dent of the United States without knowledge of the claim of S. Fieldhammer issued a patent to defendant the Oregon and California Railroad Company, to said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing patent to defendant the Oregon and California Railroad Company for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds same from your orator.

XII.

And your orator would further show unto your Honors, that on the 19th day of January, 1870, Lorenzo P. Heaton was a qualified entryman under the homestead laws of the United States; that on the said 19th day of January, 1870, the said Lorenzo P. Heaton duly filed in the land office at Oregon City, Oregon, his homestead entry No. 1450 upon the N. W. $\frac{1}{4}$ of Sec. 19, T. 2 S. of R., 2 W. of the Willamette Meridian, with the bona fide intent to acquire title thereto under the homestead laws of the United States; that said lands were then and there public lands of the United States subject to homestead entry under the laws thereof; that the defendant, the Oregon and California Railroad Company, on the 29th day of June, 1870, filed its map of definite location opposite to and coterminous with said lands with the

Secretary of the Interior, but that the patent to said lands did not pass to defendant under the terms of the grant to defendant's predecessor of July 25th, 1866, but remained in the United States for the reason that at the date of the filing of the map of definite location said homestead entry was uncanceled and in full force and effect.

And your orator would further show unto your Honors that on the 18th day of June, 1877, the President of the United States, without knowledge of the claim of Lorenzo P. Heaton, issued to defendant, the Oregon and California Railroad Company, a patent for said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing patent to the defendant the Oregon and California Railroad Company for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholders same from your orator.

XIII.

And your orator would further show unto your Honors that on the 23d day of May, 1867, G. W. Hail was a qualified entryman under the pre-emption laws of the United States; that on the 23d day of May, 1867, the said G. W. Hail duly filed in the proper land office within the State of Oregon his declaratory statement No. 1967, upon the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of Sec. 35, T. 9 S., R. 3 W.

of the Willamette Meridian, with a bona fide intent to acquire title to said land under the pre-emption laws of the United States; that said lands was then and there vacant public lands of the United States and subject to pre-emption entry under the laws thereof; that on the 29th day of January, 1870, defendant the Oregon and California Railroad Company filed its map of definite location opposite to and coterminous with said lands with the Secretary of the Interior, but that title to said lands did not pass to defendant by the terms of the grant of July 25th, 1866, but the title thereof remained in the United States for the reason that at the time of the filing of the map of definite location said pre-emption entry was uncanceled and in full force and effect.

And your orator would further show unto your Honors, that on the 12th day of July, 1871, the President of the United States without knowledge of the claim of G. W. Hail issued a patent to defendant, the Oregon and California Railroad Company to said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing a patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

XIV.

And your orator would further show unto your Honors, that on the 14th day of February, 1855, J. W. Dough-

erty was a duly qualified donation claimant under the laws of the United States and that on said date he duly filed in the proper land office within the State of Oregon, notification No. 5877 for the N. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of Sec. 9, T. 18 S., R. 5 W. of the Willamette Meridian with a bona fide intent to acquire title thereto under the donation land laws of the United States, which said lands were then and there public lands of the United States and subject to settlement under the donation land laws; that on the 26th day of March, 1870, the defendant, the Oregon and California Railroad Company filed with the Secretary of the Interior its map of definite location opposite to and coterminous with said lands, but that the title to said lands did not pass to defendant under the terms of the grant to defendant's predecessor of July 25th, 1866, for the reason that at the time of the filing of said map of definite location the said donation entry was uncanceled and in full force and effect.

And your orator would further show unto your Honors, that on the 29th day of May, 1873, the President of the United States without knowledge of the claim of J. W. Dougherty issued to defendant, the Oregon and California Railroad Company a patent to said land.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing a patent to defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defend-

ant company still claims title to said lands under said patent and withholds said lands from your orator.

XV.

And your orator would further show unto your Honors, that on the 27th day of October, 1853, James C. Clark was a duly qualified entryman and claimant under the donation land laws of the United States as applicable to the State of Oregon; that on said date James C. Clark duly filed in the proper land office within the State of Oregon, donation certificate No. 3704 upon the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, and the W. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, and the W. $\frac{1}{2}$ of Sec. 5, T. 23 S. of R. 5 W. of the Willamette Meridian with a bona fide intent to acquire title thereto under the donation land laws of the United States; that said land was then and there vacant public lands and subject to entry under the donation land laws of the United States; that on the 26th day of March, 1870, the defendant the Oregon and California Railroad Company filed with the Secretary of the Interior its map of definite location of its said road opposite to and coterminous with said lands, but that the title to said lands did not pass to defendant under the grant to its predecessor of July 25th, 1866, for the reason that at the time said grant took effect, and at the time of the filing of the map of definite location said donation entry was uncanceled and was in full force and effect.

And your orators would further show unto your Honors that on the 3d day of December, 1894, the President of the United States, without knowledge of the claim of James C. Clark, issued a patent to defendant the

Oregon and California Railroad Company, to said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing a patent to defendant for the lands described herein under the facts as stated herein, and so your orator avers said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

XVI.

And your orator would further show unto your Honors that on the 9th day of May, 1868, T. O. Bevens was a duly qualified entryman under the homestead laws of the United States, and on said date he duly filed in the proper land office within the State of Oregon his homestead entry No. 1047 upon the S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, and the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 3, T. 10 S. of R. 6 W. of the Willamette Meridian with a bona fide intent to acquire title thereto under the homestead laws of the United States; that said land was then and there vacant public lands and subject to homestead entry; that on the 26th day of March, 1870, defendant, the Oregon and California Railroad Company, filed with the Secretary of the Interior its map of definite location of its said road opposite to and coterminous with said lands, but that title to said lands did not pass to defendant under the terms of the grant to its predecessor of July 25th, 1866, for the reason that at the time of the filing of the map of definite location as aforesaid the said homestead entry was uncanceled and in full force and effect.

And your orator would further show unto your Honors that on the 18th day of June, 1877, the President of the United States, without knowledge of the claim of T. O. Bevens, issued a patent to defendant the Oregon and California Railroad Company to said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing patent to the defendant for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

XVII.

And your orator would further show unto your Honors that on the 15th day of September, 1868, William A. Miers was a duly qualified entryman under the pre-emption laws of the United States; that on said date he duly filed at the proper land office within the State of Oregon his declaratory statement No. 1238 upon Lot 8 in Sec. 15, T. 23 S. of R. 7 W. of the Willamette Meridian with a bona fide intent to acquire title thereto under the pre-emption laws of the United States; that said land was then and there public lands of the United States and subject to entry under the pre-emption laws thereof; that on the 26th day of March, 1870, defendant the Oregon and California Railroad Company filed in the office of the Secretary of the Interior its map of definite location of its said road, but that the title to said lands did

not pass to defendant by the terms of the grant to its predecessor of July 25th, 1866, for the reason that at the time of filing said map of definite location said pre-emption entry was uncanceled and still in full force and effect.

And your orators would further show unto your Honors that on the 3d day of December, 1894, the President of the United States, without knowledge of the claim of William A. Miers, issued a patent to defendant the Oregon and California Railroad Company to said lands.

But your orator avers that the ministerial officers of the United States acted mistakenly, erroneously and contrary to law in issuing a patent to the defendant for the lands described herein, under the facts stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

XVIII.

And your orator would further show unto your Honors that the Congress of the United States, by an act entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes," approved March 3d, 1887, directed and authorized the Secretary of the Interior to adjust all grants theretofore unadjusted, and if it should appear that any lands had been erroneously patented to any railroad company, to make demand for relinquishment or reconveyance, that if such company should re-

fuse to reconvey within ninety days, then it should be the duty of the Attorney General to commence and prosecute in the proper court the necessary proceedings to cancel such patents and restore title to the United States. And your orator avers that on the 29th day of June, 1900, the total grant of lands in the State of Oregon under said grant of July 25th, 1866, to said Oregon Central Railroad Company to the rights of which the said Oregon and California Railroad Company had succeeded as aforesaid, was unadjusted, and the Secretary of the Interior, regarding the said patents to the above described lands as erroneously issued, directed the Commissioner of the General Land Office to request reconveyance as provided by statute, and in accordance with such direction the Commissioner of the General Land Office did, on the 24th day of June, 1900, make demand on said railroad company, by letter addressed to William H. Mills, land agent of the Oregon and California Railroad Company, controlling the grant for said Oregon and California Railroad Company for reconveyance of said above-described lands. And your orator avers that said demand has been refused, and that said defendant has refused and still refuses to so reconvey said lands.

XIX.

And your orator would further show unto your Honors on information and belief, that the defendant, the Oregon and California Railroad Company, claims to have sold to bona fide purchasers some of the lands hereinbefore described; that the value of the lands

hereinbefore set forth and described is the sum of \$2.50 per acre.

XX.

And your orator would further show unto your Honors that if it shall be made to appear by answer of defendant, or intervention of parties interested or otherwise to your Honorable Court that any of said lands have been sold or conveyed to bona fide purchasers, and that the title of said bona fide purchaser or purchasers to said lands shall be confirmed, that the plaintiff shall recover of and from defendant, the Oregon and California Railroad Company, the sum of \$2.50 per acre for all of said lands so sold and conveyed to said bona fide purchasers.

XXI.

And your orator would further show unto your Honors that on account of the complexity of the matters to be inquired into, and as your orator is entirely remediless according to the strictest rules of the common law, and for the purpose of avoiding a multiplicity of suits, your orator brings this suit into this court, where matters of this kind are properly cognizable and relievable.

Forasmuch, therefore, as your orator can have no adequate relief except in this court, and to the end therefore that the said defendant may (complainant hereby waiving the necessity of an answer by said defendant company, but not under oath), to the best and utmost of its respective knowledge, remembrance and belief, full, true, direct and perfect answer make to each of the several interrogatories hereinafter numbered and

set forth, as by the note hereunder written it is required to answer, that is to say:

1. Whether any of the lands described herein have been sold to bona fide purchasers?

2. What lands, if any, herein set forth have been sold, if sales were had?

3. To whom were the lands sold, and what were the true terms of the sale, whether for cash or on deferred payments?

And your orator prays also that the money received by the defendant for any of the lands described herein upon sales thereof be declared to be moneys and property of the United States, and a decree that they are held in trust by defendant for the complainant, and that such money to the extent of \$2.50 per acre for the lands erroneously taken be paid to complainant, and that the lands not sold by defendant be declared to be lands of the United States, and the patents thereto be decreed to be null and void, and that your orator shall have such other and further relief as the case may require, and as shall seem meet to the Court, and as shall be agreeable to equity and good conscience.

And may it please your Honors to grant unto your orator a writ of subpoena directed to the said Oregon and California Railroad Company, commanding it to appear and answer unto this Bill of Complaint, but not under oath (an answer under oath being hereby expressly waived), and to abide and perform such order and decree in the premises as to the Court shall seem

meet and be required by the principles of equity and good conscience.

JOHN W. GRIGGS,
Attorney General of the United States.

JOHN H. HALL,
United States Attorney for the District of Oregon.

Filed February 19, 1901. J. A. Sladen, Clerk United States Circuit Court, District of Oregon.



And afterwards, to wit, on the 19th day of February, 1901, there was issued out of said court a subpoena ad respondendum, in words and figures as follows, to wit:

Return of Civil Process.

United States of America, }
District of Oregon. } ss.

I hereby certify that on the 23d day of February, 1901, at Portland, Multnomah County, in said District, I duly served the within subpoena ad respondendum upon the therein named The Oregon and California R. R. Co., by delivering to one R. Koehler, Second Vice-president of said company, personally a true copy of said subpoena ad respondendum, duly certified to by J. A. Sladen, Clerk United States Circuit Court, together with a copy of the bill of complaint in the within entitled suit duly

certified to by John H. Hall, United States attorney for said District.

ZOETH HOUSER,
United States Marshal.

By J. A. Wilson,
Deputy.

Marshal's fees, \$4.12.



In the Circuit Court of the United States for the District of Oregon.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,
Defendant.

No. 2657.

Subpoena ad Respondendum.

The President of the United States of America, to The Oregon and California Railroad Company, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of April next, which will be the first day of April, A. D. 1901, to answer the exigency of a bill of complaint exhibited and filed

against you in our said Court, wherein The United States of America is complainant, and you are defendant, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you the marshal of said District, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 19th day of February, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States, the one hundred and twenty-fifth.

J. A. SLADEN,
Clerk.

By G. H. Marsh,
Deputy Clerk.

Memorandum Pursuant to Equity Rule No. 12 of the
Supreme Court of the United States.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

Returned and filed February 23, 1901. J. A. Sladen,
Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 28th day of March, 1901, there was duly filed in said court, a praecipe for appearance of defendant, in words and figures as follows, to wit:

Circuit Court of the United States, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

Defendant.

No. 2657.

Praecipe for Appearance of Defendant.

The clerk of the Circuit Court of the United States for the District of Oregon will please enter appearance of the defendant, Oregon and California Railroad Company, in the above-entitled action, by

WM. D. FENTON and

WM SINGER, Jr.,

Attorneys for the Defendant.

WM. F. HERRIN,

Counsel for the Defendant.

Filed and entered March 28, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 29th day of May, 1901, there was duly filed in said court, a stipulation extending time to plead, in words and figures as follows, to wit:

Circuit Court of the United States, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,	}	No. 2657.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL- ROAD COMPANY,	}	
Defendant.		

Stipulation Extending Time to Plead.

It is stipulated that the defendant may have until July 1st, 1901, to file its plea, demurrer or answer to the complainant's bill in the above-entitled case; and the clerk of the said Court will please procure and enter a proper order accordingly.

JOHN H. HALL,
United States Attorney for Oregon.

WM. D. FENTON,
Of Attorneys for Defendant.

Filed May 29, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Friday, the 31st day of May, 1901, the same being the 46th judicial day of the regular April term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States, for the District of Oregon.

THE UNITED STATES,

vs.

THE OREGON AND CALIFORNIA
RAILROAD CO.

}
No. 2657,
May 31, 1901.

Order Extending Time to Plead.

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States Attorney, and the defendant by Mr. R. A. Leiter, of counsel, and, thereupon, on motion of said defendant, and upon stipulation of the parties hereto, filed herein, it is ordered, that said defendant be, and it is hereby allowed until Monday, July 1st, 1901, in which to file its answer, or otherwise plead herein.

And afterwards, to wit, on the 25th day of June, 1901, there was duly filed in said court a stipulation extending time to plead, in words and figures as follows, to wit:

Circuit Court of the United States, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,	}	No. 2657.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

Stipulation Extending Time to Plead.

It is stipulated that the defendant may have until August 5th, 1901, to file its plea, demurrer or answer to the complainant's bill, in the above-entitled case; and the clerk of the said Court will please procure and enter a proper order, accordingly.

JOHN H. HALL,
United States Attorney for Oregon.

Filed June 25, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

Sub. I.

Par. 1. The defendant admits, and alleges, that the Congress of the United States, by an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," approved on July 25th, 1866, authorized and empowered such company organized under the laws of Oregon as the legislature of said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly, through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same should connect with another railroad which the said Act authorized to be constructed in the State of California. That the said Act also granted unto such Oregon company its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and provided that when any of said alternate sections or parts of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the

limits of said first-named alternate sections. And the said Act further provided, that as soon as the said company should file in the office of the Secretary of the Interior a map of the survey of said railroad or any portion thereof not less than sixty continuous miles from either terminus, the Secretary of the Interior should withdraw from sale the public lands by the said Act granted, on each side of the railroad so far as located; and that whenever the said company had twenty or more consecutive miles of any portion of the said railroad ready for the service contemplated, the President of the United States should appoint three commissioners to examine the same, and if it should appear that twenty consecutive miles of railroad had been completed and equipped in all respects as required, the said commissioners should so report under oath to the President of the United States, and thereupon patents should issue to the said company for the lands granted, to the extent of and coterminous with the completed section of said railroad.

Par. 2. The defendant admits, and alleges, that the Oregon Central Railroad Company is, and ever since April 22d, 1867, has been, a corporation duly organized and existing under the laws of the State of Oregon. That the legislature of the State of Oregon, by Joint Resolution entitled "Senate Joint Resolution No. 16, Relating to the Railroad Land Grant from the Central Pacific Railroad in California, to Portland, Oregon," adopted March 20th, 1868, duly designated the said Oregon Central Railroad Company as the railroad company

entitled to receive the lands granted in Oregon, and the benefits and privileges conferred, by the said Act of July 25th, 1866.

Par. 3. The defendant admits, and alleges, that it is, and ever since March 17th, 1870, has been, a corporation duly organized and existing under the laws of the State of Oregon; and admits and avers that on April 4th, 1870, it became, ever since has been, and now is, the successor and assign of the Oregon Central Railroad Company, and entitled to all the privileges, benefits and grants in Oregon, provided by the said Act of July 25th, 1866.

Par. 4. The defendant alleges that during the year 1869, and within the time allowed by the Act of Congress, approved April 10th, 1869, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six," the said Oregon Central Railroad Company duly filed in the department of the interior its assent to the said Act of Congress of July 25th, 1866.

Par. 5. The defendant alleges, that on October 29th, 1869, the said Oregon Central Railroad Company filed in the office of the Secretary of the Interior, and on January 29th, 1870, the Secretary of the Interior accepted and approved, a map of the definite location and survey of the first section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which

section of railroad extended from Portland to a point at or near Jefferson, and comprised not less than sixty continuous miles from the northern terminus thereof.

Par. 6. The defendant alleges, that on March 26th, 1870, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the second section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point at or near Jefferson, to a point near the southeast corner of section 35, in township 27 south, range 6 west, Willamette Meridian, and comprised not less than one hundred and twenty continuous miles of railroad from Jefferson; that on January 7th, 1871, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the third section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point near the southeast corner of section 35, in township 27 south, range 6 west, to section 30, in township 30 south, range 5 west; that on April 6th, 1882, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, an amended map of the definite location and survey of the said third section of railroad, which amended line of railroad extended from a point in section 28, township

29 south range 5 west, to Station 1320+50 in section 6, township 30 south, range 5 west; that on April 6th, 1882, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the fourth section of the railroad in Oregon provided for by the said Act of July 25th, 1866 which section of railroad extended from the said Station 1320+50 in section 6, township 30 south, range 5 west, to Station 2376+50 in township 31 south, range 7 west; that on July 27th, 1882, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the fifth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 2376+50 in township 31 south, range 7 west, to a point in section 33, township 34 south, range 6 west; that on June 6th, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the sixth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point in section 33, township 34 south, range 6 west, to a point in section 21, township 36 south, range 3 west; that on July 3d, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior duly ac-

cepted and approved, a map of the definite location and survey of the seventh section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point in section 21, township 36 south, range 3 west, to the south line of section 32, township 37 south, range 1 west, that on September 6th, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the eighth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the south line of section 32, township 37 south, range 1 west, to the east line of section 25, township 39 south, range 1 east; that on August 2d, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the ninth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the east line of section 25, township 39 south, range 1 east, to the north line of section 30, township 40 south, range 3 east; and that on August 20th, 1884, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the tenth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of

railroad extended from the said point on the north line of section 30, township 40 south, range 2 east, to the southern line of the State of Oregon, in section 13, township 41 south, range 1 east.

Par. 7. The defendant alleges, that the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd-numbered sections of land within thirty miles on each side of the line of railroad shown on the maps set forth and described in "Par. 6," hereof, from sale or location, pre-emption or homestead entry, on the following dates: Opposite, and coterminous with, the said first section of railroad, on January 31st, 1870; opposite, and coterminous with, the said second section of railroad, on April 7th, 1870; opposite, and coterminous with, the said third section of railroad, on March 31st, 1871; opposite, and coterminous with, the said amended section of railroad, on July 5th, 1883; opposite, and coterminous with, the said fourth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said fifth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said sixth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said seventh section of railroad, on September 3d, 1883; opposite, and coterminous with, the said eighth section of railroad on October, 27th, 1883; opposite and coterminous with, the said ninth section of railroad, on October 27th, 1883; and opposite, and coterminous with, the said tenth section of railroad on December 19th, 1884. And the defendant alleges that the said with-

drawals by the Commissioner have, each and all, remained in full force and effect from the date thereof continuously to and including the present time, except in so far as, if at all, they have been affected by an order of the Secretary of the Interior, made on August 15th, 1887, declaring said withdrawals revoked as to the odd-numbered sections within the indemnity limits of the grant made by the said Act of July 25th, 1866.

Par. 8. The defendant alleges, that the entire railroad contemplated and provided for by the said Act of July 25th, 1866, along the line shown on the maps set forth and described in "Par. 6" hereof, was constructed in several sections and fully equipped in all respects as required by the said Act of July 25th, 1866, by the said Oregon Central Railroad Company and this defendant; and Commissioners, duly appointed by the President of the United States for that purpose, duly examined the said railroad as completed and equipped in the several sections aforesaid, and duly reported to the President of the United States, under oath, that each of said sections of railroad had been completed and equipped in all respects as required by the said Act of Congress, and that the same was and were ready for the service contemplated by the said Act; which reports were duly accepted and approved by the President of the United States. The said reports were so made, accepted and approved, on the following dates: The first twenty miles, commencing at Portland, report made on December 31st, 1869, accepted and approved on January 29th, 1870; the second twenty miles, report made on July 5th,

1870, accepted and approved on February 28th, 1871; third twenty miles and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; fifth twenty miles, report made on August 11th, 1871, accepted and approved on March 11th, 1872; sixth twenty miles report made on January 13th, 1872, accepted and approved on March 11th, 1872; seventh, eighth, and ninth sections including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved on July 11th, 1878; from Roseburg to the south boundary line of Oregon, in several sections, reports made and approved as the railroad was completed and examined in sections, during the years 1878 to 1889.

Sub. II.

Par. 9. The defendant admits that the first sixty miles of its railroad was definitely fixed and a plat thereof duly filed, but denies that the date thereof was or is March 26th, 1870, as alleged in the bill of complaint herein, and alleges that the true particulars in this ~~part~~ are as set forth in Sub. 1, Par. 5, of this answer; and the defendant admits that all the lands described in subdivision II of the bill of complaint herein, are odd-numbered sections, or parts of odd-numbered sections, of land, not mineral, within the primary limits of the land grant made by the said Act of July 25th, 1866; and the defendant admits that all of said lands lying north of the south line of township 10 south, are within the primary limits of that portion of the said grant designated by the plat of the first sec-

tion of said railroad (filed on October 29th, 1869, not on March 26th, 1870, as alleged in the bill of complaint herein); alleges that the remainder of said lands are opposite and coterminous with other sections of said railroad, but denies that any of such other lands are opposite, or coterminous with the said first section of railroad.

Sub. III.

Par. 10. The defendant alleges that the true facts and particulars in respect of the matters and things set forth in subdivision III of the bill of complaint herein, are as follows: Lot 1, of section 15, township 3 south, range 1 east is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. At all the times when the said grant was made and the railroad definitely located and constructed, pre-emption declaratory statement No. 131, in the name of one R. Ogle, for the said lot, purporting to have been filed on May 16th, 1857, was on file in the United States land office at Oregon City, Oregon; but the said lot was never pre-empted in pursuance of the said filing, or otherwise. Thereafter on May 9th, 1871, and while the said lot remained vacant and unappropriated public land, not included by any exception to the grant of lands made by the said Act of July 25th, 1866, except in so far as, if at all, the existence of the

said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said lot to it (this defendant). The defendant denies that the said lot did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement, or any cause; and denies that the said patent was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. And in this behalf defendant alleges that the said lot constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said lot under the said grant and patent.

Par. 11. The defendant has no knowledge nor information as to the matters and things set forth in subdivision III of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 12. Further answering, the defendant alleges that it (this defendant), on March 28th, 1874, sold and by deed bearing that date conveyed the said lot unto the European and Oregon Land Company, a corporation of Oregon; that the said sale and purchase were made in good faith, for full value of the said lot in hand paid at the time of sale, without notice to or

knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever in or to the said lot, or any part thereof, and the said corporation was and is a bona fide purchaser of the said lot.

Sub. IV.

Par. 13. The defendant alleges that the true facts and particulars in respect of the matters and things set forth in subdivision IV of the bill of complaint herein, are as follows: The NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 11, township 39 south, range 2 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of the defendant's railroad which was definitely located on August 2d, 1883. On September 1st 1883 (but not on July 9th, 1879, as alleged in subdivision IV of the bill of complaint herein), one E. Wells was permitted by the local United States land officers to and did, make cash entry No. 5498 of and for the said tract; which cash entry the Commissioner of the General Land Office held for cancellation on July 15th, 1884, and finally canceled on November 25th, 1887; the said Commissioner having duly ascertained, and finally determined, that the said cash entry was erroneously permitted to be made at a date subsequent to the date of the definite location of this defendant's railroad opposite and coterminous with the last described tract of land. Thereafter, on March 16th, 1896, the proper officers of the United States is-

sued a patent conveying the said tract to it (this defendant). The defendant denies that the said tract of land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said cash entry, or any cause; and denies that the said patent was issued mistakenly, erroneously, or contrary to law, or that the said patent is void. And in this behalf the defendant alleges that the said tract constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued and the defendant admits that it (defendant) claims title to the said tract under the said land grant and patent.

Par. 14. The defendant has no knowledge nor information as to the matters and things set forth in subdivision IV of the bill of complaint herein not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in any wise true.

Sub. V.

Par. 15. The defendant admits that the W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9, township 5 south, range 1 east, was covered by homestead No. 907, in the name of John E. Perdue, filed in the proper land office of the United States on September 12th, 1867; but alleges, on information and belief, that the said Perdue did not occupy the said land as a homestead settler, or otherwise, at the date its (defendant's) railroad was definitely

located opposite and coterminous with the said land. The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead, or any cause; and denies that the patent, set forth in subdivision V of the bill of complaint herein, was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest hereinafter mentioned claim title to the said land under the said grant and patent.

Par. 16. The defendant has no knowledge nor information as to the matters and things set forth in subdivision V of the bill of complaint herein not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 17. Further answering, the defendant alleges that it (this defendant), on August 11, 1900, made and entered into contract No. 5817 with S. O. Owen, for the credit sale of said land by this defendant to the said S. O. Owen; that the said sale and purchase were made in good faith for a consideration price, paid and agreed to be paid, equal to the full value of the said land, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed

to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said S. O. Owen was and is a bona fide purchaser of the said land.

Sub. VI.

Par. 18. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision VI of the bill of complaint herein, are as follows: The W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 13, township 6 south, range 1 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and co-terminous with the section of the defendant's railroad which was definitely located on October 29, 1869, the construction of which was finally accepted and approved on January 29th, 1870. At all the times when the said grant was made and railroad definitely located and constructed, pre-emption declaratory statement No. 431, in the name of I. V. Willis, for the said land, purporting to have been filed on September 11th, 1858, was on file in the United States land office at Oregon City, Oregon; but the said land was never pre-empted, in pursuance of the said filing, or otherwise. Thereafter, on July 18th, 1877, and while the said land remained vacant and unappropriated public land, not included by any exception to the grant of lands made by the said Act of July 25th, 1866, except in so far as, if at all, the existence of the said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said land to it

(this defendant). The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement, or any cause; and denies that the said patent was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) claims title to said land under the said grant and patent.

Par. 19. The defendant has no knowledge nor information as to the matters and things set forth in subdivision VI of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Sub. VII.

Par. 20. The defendant alleges that the true facts and particulars in respect of the matters and things set forth in subdivision VII of the bill of complaint herein, are as follows: The SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 3, township 2 south, range 2 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on October 29th, 1869, the con-

struction of which was finally accepted and approved on January 29th, 1870. At all the times when the said grant was made and railroad definitely located and constructed pre-emption declaratory statement No. 657, in the name of N. N. Matlock, for the said land, purporting to have been filed on June 1st, 1859, was on file in the United States land office at Oregon City, Oregon; but the said land was never pre-empted, in pursuance of the said filing, or otherwise. Thereafter, on June 18th, 1877, and while the said land remained vacant and unappropriated public land, not included by any exception to the grant of lands made by the said Act of July 25th, 1866, except in so far as, if at all, the existence of the said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said land to it (this defendant). The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement or any cause; and denies that the said patent was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 21. The defendant has no knowledge nor information as to the matters and things set forth in sub-

division VII of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint are in anywise true.

Par. 22. Further answering, the defendant alleges that it (this defendant), on February 26th, 1880, sold and by deed bearing that date conveyed the said land unto John Aldred; that the said sale and purchase were made in good faith for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said John Aldred was and is a bona fide purchaser of the said land.

Sub. VIII.

Par. 23. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision VIII of the bill of complaint, are as follows: The SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 21, township 4 south, range 2 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on October 29th, 1869 (not on January 29th, 1870, as alleged in subdivision VIII of the bill of complaint herein), the construction of which was finally accepted and approved on January 29th, 1870. On January 5th, 1870, and after

definite location of the defendant's railroad as aforesaid, homestead No. 1427 was filed in the United States land office at Oregon City, Oregon, in the name of G. J. Trullinger, for the said land; but the defendant alleges, on information and belief, that the said Trullinger did not occupy the said land as a homestead settler, or otherwise, at any time. Thereafter, on June 18th, 1877, the proper officers of the United States issued a patent conveying the said land to it (this defendant). The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead filing, or any cause; and denies that the said patent was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And in this behalf defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 24. The defendant has no knowledge nor information as to the matters and things set forth in subdivision VIII of the bill of complaint herein not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 25. Further answering, the defendant alleges that it (this defendant), on February 28th, 1891, sold

and by deed bearing that date conveyed the said SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ unto D. L. Trullinger; that the said sale and purchase were made in good faith for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said D. L. Trullinger was and is a bona fide purchaser of the said land.

Par. 26. Further answering, the defendant alleges that it (this defendant), on August 12th, 1885, sold and by deed bearing that date conveyed, the said NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ unto E. L. Trullinger; that the said sale and purchase were made in good faith for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said E. L. Trullinger was and is a bona fide purchaser of the said land.

Sub. IX.

Par. 27. The defendant admits that Lot 1, in section 7, township 5 south, range 2 east, was covered by a homestead No. 323, in the name of J. J. Dingman, filed in the land office of the United States at Oregon City, Oregon, on September 28th, 1865; but alleges, on information and belief, that the said Dingman did not occupy the said land as a homestead settler, or other-

wise, on July 25th, 1866, or at the date its (defendant's) railroad was definitely located opposite and coterminous with the said land. The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead, or any cause, and denies that the patent, set forth in subdivision IX of the bill of complaint was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said lands, under the said grant and patent.

Par. 28. The defendant has no knowledge nor information as to the matters and things set forth in subdivision IX of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 29. Further answering, the defendant alleges that it (this defendant), on August 12th, 1885, sold and by deed bearing that date, conveyed, said land unto Oscar W. Sturgess; that the said sale and purchase were made in good faith, for full value of the said land in hand paid at the time of the sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have,

any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said Sturgess was and is a bona fide purchaser of the said land.

Sub. X.

Par. 30. The defendant admits that the SW. $\frac{1}{4}$ of section 27, township 1 south, range 3 east, was covered by homestead No. 764, in the name of George W. Duke, filed in the United States land office at Oregon City, Oregon, on December 22d, 1866; but alleges, on information and belief that the said Duke did not occupy the, said land as a homestead settler, or otherwise, at the date its (defendant's) railroad was definitely located opposite and coterminous with the said land. The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead, or any cause; and denies that the patent set forth in subdivision X of the bill of complaint herein, was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant), and its grantees and successors in interest, hereinafter mentioned, claim the title to the said land under the said grant and patent.

Par. 31. The defendant has no knowledge nor information as to the matters and things set forth in subdivision X of the bill of complaint herein, not expressly

admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 32. Further answering, the defendant alleges that it (this defendant), on August 12th, 1885, sold and by deed bearing that date conveyed the said land unto Milliam Mellien; that the said sale and purchase were made in good faith, for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right title or interest whatsoever in or to the said land, or any part thereof—and the said Mellien was and is a bona fide purchaser of the said land.

Sub. XI.

Par. 33. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision XI of the bill of complaint herein, are as follows: The SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 35, township 2 south, range 3 east, is part and parcel of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. At all times when the said grant was made and railroad definitely located and constructed pre-emption declaratory statement No. 562,

in the name of one S. Fieldhammer, for the said land, purporting to have been filed on May 24th, 1859, was on file in the United States land office at Oregon City, Oregon; but the said lot was never pre-empted in pursuance to the said filing, or otherwise. Thereafter, on May 9th, 1871, and while the said lot remained vacant and unappropriated public land not included by any exception to the grant of lands made by the said Act of July, 1866, except in so far as, if at all, the existence of the said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said land to it (this defendant). And the defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement, or any cause; and denies that the said patent was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land, under the said grant and patent.

Par. 34. The defendant has no knowledge nor information as to the matters and things set forth in subdivision XI of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that

any of such matters and things, as set forth in the bill of complaint are in any wise true.

Par. 35. The defendant alleges that it (this defendant), on August 17th, 1876, sold and by deed bearing that date conveyed, the said land unto Ludwig Dane; that the said sale and purchase were made in good faith, for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever in or to the said land, or any part thereof—and that the said Dane was and is a bona fide purchaser of the said land.

Sub. XII.

Par. 36. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision XII of the bill of complaint herein, are as follows: The NW. $\frac{1}{4}$ of section 19, township 2 south, range 2 west, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. On January 19th, 1870, subsequent to definite location of the coterminous section of defendant's railroad as aforesaid, homestead No. 1450 was filed in the United States land office at Oregon City, Oregon, in the name of one Lorenz P. Heaton; but defendant alleges, on information and belief, that the

said Heaton did not occupy the said land as a homestead settler, or otherwise, at any time. The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead, or any cause; and denies that the patent, set forth in subdivision XII of the bill of complaint herein was issued mistakenly, erroneously, or contrary to law or that said patent is void. And the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 37. The defendant has no knowledge nor information as to the matters and things set forth in subdivision XII of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in any wise true.

Par. 38. Further answering, the defendant alleges that it (this defendant), on August 15th, 1885, sold and by deed bearing that date conveyed, the E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of the said section 19 unto the Oswego Iron Works, a corporation of Oregon; that the said sale and purchase were made in good faith, for full value of the said land, in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser

that the United States had, or claimed to have, any right, title or interest whatsoever in or to the said land, or any part thereof—and the said corporation was and is a bona fide purchaser of the said land.

Par. 39. Further answering, the defendant alleges that it (this defendant), on June 16th, 1883, under credit contract payable in ten annual installments, sold unto Theodore H. Lammers the W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of the said section 19; that all the payments provided for in the said contract were duly made, and on February 6th, 1899, this defendant issued its deed conveying the said land unto E. L. McCormick, assignee of the said Theodore H. Lammers. That the said sales and purchases were made in good faith for full value of the said land at the time of the sales, without notice to or knowledge of this defendant or either of the said purchasers that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and each of the said purchasers was and is a bona fide purchaser.

Sub. XIII.

Par. 40. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision XIII of the bill of complaint herein, are as follows: The W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 35, township 9 south, range 3 west, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and co-terminous with the section of defendant's railroad

which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. At all the times when the said railroad was definitely located and constructed, pre-emption declaratory statement No. 1967, in the name of one G. W. Hail, for the said land, purporting to have been filed on May 23d, 1867, was on file in the United States Land office at Oregon city, Oregon; but the said land was never pre-empted in pursuance of the said filing, or otherwise. Thereafter, on July 12th, 1871, and while the said land remained vacant and unappropriated public lands, not included by any exception to the grant of lands made by the said Act of July 25th, 1866, except in so far as, if at all, the existence of the said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said land to it (this defendant). The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement, or any cause; and denies that the said patent was issued mistakenly, erroneously or contrary to the law, or that the said patent is void. And in this behalf defendant alleges that said land constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 41. The defendant has no knowledge nor infor-

mation as to the matters and things set forth in subdivision XIII of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 42. Further answering, the defendant alleges that it (this defendant), on June 18th, 1894, sold and by deed bearing that date conveyed, the said land unto James W. Fiddler; that the said sale and purchase were made in good faith, for the full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said Fiddler was and is a bona fide purchaser of the said land.

Sub. XIV.

Par. 43. The defendant admits that the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 9, township 18 south, range 5 west, was covered by donation notification No. 5877, in the name of J. W. Dougherty, filed in the proper land office of the United States prior to July 25th, 1866; but alleges, on information and belief, that the said J. W. Dougherty abandoned the said land without having paid for it or resided thereon four years, nor was he residing thereon on July 25th, 1866, nor at the date this defendant's railroad was definitely located opposite and coterminous with the said land. The defendant denies that the said land did not pass to it (defendant) by the said grant of

July 25th, 1866, because of the said notification, or any cause; and denies that the patent set forth in subdivision XIV of the bill of complaint herein, was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. But the defendant alleges that the said land constituted a part and parcel of the lands granted by the said act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 44. The defendant has no knowledge or information as to the matters and things set forth in subdivision XIV of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer; and on that ground denies that, any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Par. 45. Further answering, the defendant alleges that it (this defendant), on September 4th, 1889, sold by credit contract payable in ten annual installments, the said land unto Gust Petzold, all of which payments were duly made, and on November 27th, 1899, this defendant conveyed the said land by deed unto the said contract purchaser; that the said sale and purchase were made in good faith, for full value of said land at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land or any part thereof—and

the said purchaser was and is a bona fide purchaser of the said land.

Sub. XV.

Par. 46. The defendant admits that the NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of NE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of section 5, township 23 south; range 5 west, was covered by donation notification No. 3704, in the name of James C. Clark, filed in the proper land office of the United States prior to July 25th, 1866; but alleges, on information and belief, that the said James C. Clark abandoned the said land without having paid for it or resided thereon for four years, nor was he residing thereon on July 25th, 1866, nor at the date this defendant's railroad was definitely located opposite and coterminous with the said land. The defendant denies that the said land did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said notification or any cause; and denies that the patent set forth in subdivision XV of the bill of complaint herein was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. But the defendant alleges that the said land constituted a part and parcel of the lands granted by the said act of July 25th 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 47. The defendant has no knowledge nor information as to the matters and things set forth in subdivision XV of the bill of complaint herein, not expressly

admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in any wise true.

Par. 48. Further answering, the defendant alleges that it (this defendant), on May 23d, 1887, sold the credit contract payable in ten annual installments the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of the said land unto F. M. Andrews, all of which installments were duly paid, and on October 3d, 1898; this defendant conveyed the said land by deed unto the said contract purchaser; that the said sale and purchase were made in good faith, for full value of the said land at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title, or interest whatsoever in or to the said land or any part thereof—and the said purchaser was and is a bona fide purchaser of the said land.

Sub. XVI.

Par. 49. The defendant admits that the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 3 township 10, south, range 6 west, was covered by homestead No 1047 in the name of T. O. Bevens, filed in the United States land office at Oregon City, Oregon, on May 9; 1868; but alleges, on information and belief; that the said Bevens did not occupy the said land as a homestead settler, or otherwise, at the date its (defendant's) railroad was definitely located opposite and coterminous with the said land. That defendant denies that the said land did not

pass to it (defendant) by the said grant of July 25th, 1866, because of the said homestead, or any cause; and denies that the patent set forth in subdivision XVI of the bill of complaint herein was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 50. The defendant has no knowledge nor information as to the matters and things set forth in subdivision XVI of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in any wise true.

Par. 51. Further answering, the defendant alleges that it (this defendant), on February 28th, 1891, sold and by deed bearing that date conveyed the SW $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of the said land unto Thomas O. Bevens; that the said sale and purchase were made in good faith, for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any

part thereof, and the said purchaser was and is a bona fide purchaser of the said land.

Par. 52. Further answering, the defendant alleges that it (this defendant), on February 18th, 1891, sold and by deed bearing that date conveyed the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of the said land unto Thomas O. Bevens; that the said sale and purchase were made in good faith, for full value of the said land in hand paid at the time of sale, without notice to or knowledge of either this defendant or the said purchaser that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said land, or any part thereof—and the said purchaser was and is a bona fide purchaser of the said land.

Sub. XVII.

Par. 53. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision XVII of the bill of complaint herein, are as follows: Lot 8, of section 15, township 23 south, range 7 west, is part of an odd section of land within the primary limits of the grant made by the said act July 25th, 1866, and is opposite and coterminous with the section of defendant's railroad which was definitely located on March 26th, 1870. On March 26th, 1870, pre-emption declaratory statement No. 1238, in the name of William A. Miers, for the said lot, purporting to have been filed on September 15th, 1868, was on file in the United States land office at Oregon City, Oregon; but the said lot was never pre-empted, in pursuance of the said filing, or otherwise. Thereafter, on December 3d, 1894,

and while the said lot remained vacant and unappropriated public land, not included by any exception to the grant of lands made by the said Act of July 25th, 1866, except in so far as, if at all, the existence of the said declaratory statement filing affected its status, the proper officers of the United States issued a patent conveying the said lot to it (this defendant). The defendant denies that said lot did not pass to it (defendant) by the said grant of July 25th, 1866, because of the said declaratory statement, or any cause; and denies that the said patent was issued mistakenly, erroneously, or contrary to the law, or that the said patent is void. And in this behalf defendant alleges that the said lot constituted a part and parcel of the lands granted by the said Act of July 25th, 1866, and the said patent was properly and lawfully issued; and the defendant admits that it (defendant) and its grantees and successors in interest, hereinafter mentioned, claim title to the said land under the said grant and patent.

Par. 53. The defendant has no knowledge nor information as to the matters and things set forth in subdivision XVII of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

Sub. XVIII.

Par. 54. The defendant alleges that, including all the lands described in the bill of complaint herein, it

(defendant) has not received the full quantity of land provided in the grant made by the said Act of July 25th, 1866.

Sub. XIX.

Par. 55. The defendant denies that on June 24th, 1900, or at any other time, the Commissioner of the General Land Office (except as hereinafter admitted) made demand on this defendant, by letter addressed to William H. Mills, or otherwise, for reconveyance of the lands described in the bill of complaint, or any part or portion thereof; but the defendant admits that by letter dated September 12th, 1900, addressed to the said William H. Mills, the Commissioner did command reconveyance of the following, but no other, lands described in the bill of complaint herein, to wit: NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 11, township 39 south, range 2 east; W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9, township 5 south, range 1 east; W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 13, township 6 south, range 1 east; N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of section 5, township 23 south, range 5 west; lot 8 of section 15, township 23 south, range 7 west.

Sub. XX.

Par. 56. The defendant admits that it claims to have sold to bona fide purchasers some of the lands described in the bill of complaint herein, but denies that the value of the lands described in the bill of complaint is \$2.50 per acre, or any sum in excess of \$1.25 per acre.

Sub. XXI.

Par. 57. The defendant denies that the complainant is entitled to recover from it (defendant) the sum of

\$2.50 per acre, or any other sum, for any lands described in the bill of complaint and sold by it (defendant) to bona fide purchasers; and the defendant alleges, upon information and belief, that this court has no jurisdiction of any demand for judgment in money, sought to be made by the bill of complaint herein.

Sub. XXII.

Par. 58. The defendant denies that there is any complexity in or of matters to be inquired into herein; and denies that on account of the complexity of the matters to be inquired into, or on any account, complainant is remediless according to rules of the common law; and denies that for such reasons, on such account, and for, or for, the purpose of avoiding a multiplicity of suits, the complainant brought this suit in this court. And in this behalf the defendant alleges, on information and belief, that this court has no jurisdiction of any matters and things set forth in the bill of complaint, except in so far as such matters and things relate to the cancellation of patents for lands which have not been sold by this defendant to bona fide purchasers; and as to all other matters and things set forth in the bill of complaint, in so far as, if at all, they state or make out any cause or causes of action, the complainant has a complete, speedy and adequate remedy by a single action at law.

Sub. XXIII.

Par. 59. And the defendant denies all and all manner of matter, cause, or thing in the complainant's said

bill contained, material, or necessary for it to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of the defendant. All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court may direct; and the defendant prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

WM. D. FENTON and

WM. SINGER, Jr.,

Attorneys for the Defendant.

WM. F. HERRIN,

Counsel for the Defendant.

District of Oregon, }
Multnomah County. } ss.

Geo. H. Andrews makes solemn oath and says: I am Secretary of the Oregon and California Railroad Company, the defendant named in the foregoing answer. I have read the foregoing answer and know the contents thereof, and the same is true of my knowledge, except as to the matters and things therein stated on information and belief, and as to such matters I verily believe the answer to be true.

GEO. H. ANDREWS.

Subscribed and sworn to before me on August 5th,
1901.

[Seal]

R. A. LEITER,

Notary Public for Oregon.

State of Oregon,
County of Multnomah. }

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 5th day of August, 1901, by receiving a copy thereof duly certified to as such by Wm. D. Fenton of attorneys for defendant.

JOHN H. HALL,
Attorney for Complainant.

Filed August 5th, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 8th day of August, 1901, there was duly filed in said court, a replication, in words and figures as follows, to wit:

In the Circuit Court of the United States, for the District of Oregon.

IN EQUITY.

UNITED STATES,

Plaintiff,

vs.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,

Defendant.

No. 2657.

Replication.

Replication of John H. Hall, District Attorney for the United States for the District of Oregon, who prose-

cuter for the said United States in this behalf to the answer of defendant.

This replicant, for the said United States, saving and reserving all advantages of exception to the said answer, for replication thereunto says, that he for the said United States will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be relied unto by this replicant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this replicant for the said United States, is and will be ready to aver and prove, and this Honorable Court shall direct; and for the said United States he prays as in and by his said bill he has already prayed.

JOHN H. HALL,
United States Attorney.

Filed August 8th, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 13th day of June, 1902, there was duly filed in said court, a stipulation of facts, in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

UNITED STATES OF AMERICA,	} Case No. 2657.
Complainant,	
vs.	
OREGON AND CALIFORNIA RAIL- ROAD COMPANY,	
Defendant.	

Stipulation of Facts.

It is stipulated and agreed as follows:

Item 1. The Act of Congress approved July 25th, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," as printed in volume 14 of the United States Statutes at Large, on pages 239 and following, is admitted in evidence.

Item 2. The Oregon Central Railroad Company is a corporation duly incorporated and organized on April 22d, 1867, by and in virtue of the laws of the State of Oregon.

Item 3. That the legislature of the State of Oregon, by its Joint Resolution adopted October 20th, 1868, duly designated the said Oregon Central Railroad Com-

amended line of railroad extended from Station 1154 in section 28, township 29 south, range 5 west, to Station 1320+50 in section 6, township 30 south, range 5 west; on April 6, 1882, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on April 8th, 1882, duly accepted and approved, a map of the definite location and survey of the fourth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 1320+50 in section 6, township 30 south, range 5 west, to Station 2376+50 in township 31 south, range 7 west; on August 24th, 1882, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on September 7th, 1882, duly accepted and approved, a map of the definite location and survey of the fifth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 2376+50 in township 31 south, range 7 west, to the north line of section 33, township 34 south, range 6 west; on June 6th, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the sixth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said north line of section 33, township 34 south, range 6 west, to the east line of section 21, township 36 south, range 3 west; on July 3d, 1883, the defendant filed in the office of the

Secretary of the Interior, and the Secretary of the Interior on July 6th, 1883 duly accepted and approved, a map of the definite location and survey of the seventh section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said east line of section 21, township 36 south, range 3 west, to the south line of section 32 township 37 south, range 1 west; on September 4th, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the eighth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the south line of section 32, township 37 south, range 1 west, to the east line of section 25, township 39 south, range 1 west; on August 1st, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the ninth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the east line of section 25, township 39 south, range 1 east, to the north line of section 30, township 40 south, range 2 east; and on August 18th, 1884, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the tenth section of the railroad in Oregon provided for by

proved on February 28th, 1871; third twenty miles and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; fifth twenty miles, report made on August 11th, 1871, accepted and approved on March 11th, 1872; sixth twenty miles, report made on January 13th, 1872, accepted and approved on March 11th, 1872; seventh, eighth and ninth sections including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved July 11th, 1878; from Roseburg to the south boundary line of Oregon, in several sections, reports made and approved as the railroad was completed and examined in sections, during the years 1878 to 1889.

Item 11. Lot 1 of section 15, township 3 south, range 1 east, is part of an odd section of unoffered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On May 16th, 1857, one R. Ogle filed his pre-emption declaratory statement No. 131, in the proper land office of the United States, for the said lot; which declaratory statement was on file and of record, uncanceled, in the said land office, at the times the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was

never tendered nor made under or in pursuance of the said filing.

(b) On May 9th, 1871, the proper officers of the United States issued a patent, in due form, purporting to convey the said lot to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of R. Ogle, hereinbefore set forth, excepted the said lot from the lands granted by the said Act of July 25th, 1866.

(c) On March 28th, 1874, the defendant sold, and by deed bearing that date conveyed, the said lot unto the European and Oregon Land Company, a corporation of Oregon; which sale and purchase were made in good faith, for full value of the said lot at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said pre-emption declaratory statement.

Item 12. The W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9, township 5 south, range 1 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On September 12th, 1867, one John E. Perdue filed his homestead claim No. 907, in the proper land office of the United States, for the tract of land de-

scribed in the next preceding paragraph hereof; which homestead claim was on file and of record, uncanceled, in the said land office, at the times the map of definite location referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered or made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said land as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the homestead filing of John E. Perdue, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On August 11th, 1900, the defendant made and entered into contract No. 5817 with one S. O. Owen, for the credit sale of said land to him; upon which contract \$56 was paid on account of the purchase price at the time, and the balance of purchase price, with interest, was agreed to be paid ten years from the date of contract, and the said contract is still in full force and effect. The said contract purchase was made in good faith, for a consideration price paid and agreed to be paid equal to the full value of the land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead filing.

Item 13. The W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 13, township 6 south, range 1 east is a part of an odd section of un-

offered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On September 11th, 1858, one I. V. Willis filed his pre-emption declaratory statement No. 431 in the proper land office of the United States, for the land described in the next preceding paragraph hereof; which declaratory statement was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said land to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of I. V. Willis, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

Item 14. The SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 3, township 2 south, range 2 east, is part of an odd section of unoffered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and

coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On June 1st, 1859, one N. N. Matlock filed his pre-emption declaratory statement No. 657, in the proper land office of the United States, for the land described in the next preceding paragraph hereof; which declaratory statement was on file and of record, uncanceled, in the said land office, at the times the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said lot to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of N. N. Matlock, hereinbefore set forth, excepted the said lands granted by the said Act of July 25th, 1866.

(c) On February 26th, 1880, the defendant sold, and by deed bearing that date conveyed, the said land unto John Aldred; which sale and purchase were made in good faith for full value of the said land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said pre-emption declaratory statement.

Item 15. The SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 21, township 4 south, range 2 east, are parts of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and are opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On January 5th, 1870, one G. J. Trullinger filed his homestead claim No. 1427, in the proper land office of the United States, for the lands described in the next preceding paragraph hereof; which homestead claim was on file and of record uncanceled, at the times the map referred to it in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said lands to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the homestead claim of G. J. Trullinger, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On February 28th, 1891, the defendant sold, and by deed bearing that date conveyed, the said SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ unto D. L. Trullinger; which sale and purchase were made in good faith, for full value of the said land

at the time of sale without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead claim.

(d) On August 12th 1885, the defendant sold, and by deed bearing that date conveyed, the said NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ unto E. L. Trullinger; which sale and purchase were made in good faith, for full value of the said land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead claim.

Item 16. Lot 1 of section 7, township 5 south, range 2 east, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On September 28th, 1865, one J. J. Dingman filed his homestead claim No. 323 in the proper land office of the United States, for the said lot; which homestead claim was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On July 12th, 1871, the proper officers of the United States issued a patent, in due form, purporting to convey the said lot to the defendant as part and portion of the lands granted by the said Act of July 25th,

1866; which patent was duly and properly issued unless the homestead filing of J. J. Dingman, hereinbefore set forth, excepted the said lot from the lands granted by the said Act of July 25th, 1866.

(c) On August 12th, 1885, the defendant sold, and by deed bearing that date conveyed, the said lot unto Oscar W. Sturgess; which sale and purchase were made in good faith, for full value of the said lot at the time of sale without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead filing.

Item 17. The SW. $\frac{1}{4}$ of section 27, township 1 south, range 3 east, is part of an odd section of land, within the primary limits of the grant made by the said Act of July 25th, 1866, and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On December 22d, 1866, one George W. Dukes filed his homestead claim No. 764, in the proper land office of the United States, for the said land; which homestead claim was on file and of record, uncanceled, in the said land office at the times the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered or made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent in due form, purporting to convey the said land to the defendant as part and

portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the homestead claim of the said George W. Dukes, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On August 12th, 1885, the defendant sold, and by deed bearing that date conveyed, the said land unto William Mellien; which sale and purchase were made in good faith, for full value of the said land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead filing.

Item 18. The SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 35, township 2 south, range 3 east, is part of an odd section of un-offered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On May 29th, 1859, one S. Fieldhammer filed his pre-emption declaratory statement No. 562, in the proper land office of the United States, for the said land, which declaratory statement was on file and of record, uncanceled, in the said land office at the times the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or pay-

ment was never tendered nor made, under or in pursuance of the said filing.

(b) On May 9th, 1871, the proper officers of the United States issued a patent, in due form, purporting to convey the said lands to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of S. Fieldhammer, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On August 17th, 1876, the defendant sold, and by deed bearing that date conveyed, the said land unto Ludwig Dane; which sale and purchase were made in good faith for full value of the said land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said pre-emption declaratory statement.

Item 19. The NW. $\frac{1}{4}$ of section 19, township 2 south, range 2 west, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On January 19th, 1870, one Lorenzo P. Heaton filed his homestead claim No. 1450, in the proper land office of the United States, for the said land; which

homestead claim was on file and of record, uncanceled, in the said land office, at the times the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said land to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the homestead filing of Lorenzo P. Heaton, hereinbefore set forth excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On August 15th, 1885, the defendant sold, and by deed bearing that date conveyed, the E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of the said section 19 unto the Oswego Iron Works, a corporation; which sale and purchase were made in good faith, for full value, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead filing.

(d) On June 16th, 1883, the defendant sold under credit contract payable in ten annual installments unto Theodore H. Lammers, the W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of the said section 19; that all the payments provided for in the said contract were duly made, and on February 6th, 1899, the defendant issued its deed conveying the said W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ unto E. L. McCormick, assignee of the said Theodore H. Lammers; that the said sales and purchases were made in good faith, for full value, without

notice other than such presumptive notice as is given by the law of the existence of the said homestead filing.

Item 20. The W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 35, township 9 south, range 3 west, is part of an odd section of un-offered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of the Interior on January 29th, 1870.

(a) On May 23d, 1867, one G. W. Hail filed his pre-emption declaratory statement No. 1976, in the proper land office of the United States for the said land; which declaratory statement was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On July 12th, 1871, the proper officers of the United States issued a patent, in due form, purporting to convey the said land to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of G. W. Hail, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On June 18th, 1894, the defendant sold, and by deed bearing that date conveyed, the said land unto James W. Fidler; which sale and purchase were made in good faith, for full value, without notice other than such presumptive notice as is given by the law of the existence of the said pre-emption declaratory statement.

Item 21. The N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 9, township 18 south, range 5 west, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with and approved by the Secretary of the Interior on March 29th, 1870.

(a) On February 14th, 1855, one J. W. Dougherty filed his donation notification No. 5877, in the proper land office of the United States, for the said land; which notification was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said notification.

(b) On May 29th, 1872, the proper officers of the United States issued a patent, in due form, purporting to convey the said land to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the donation notification of J. W. Dougherty,

hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On September 4th, 1889, the defendant sold, by credit contract payable in ten annual installments, the said land unto Gust Petzold, all of which payments were duly made, and on November 27th, 1899, the defendant conveyed the said land by deed unto the said contract purchaser; which sale and purchase were made in good faith, for full value, without notice other than such presumptive notice as is given by law of the existence of the said donation notification.

Item 22. The SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 3, township 10 south, range 6 west, is part of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866; and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with and approved by the Secretary of the Interior on March 29th, 1870.

(a) On May 9th, 1868, one T. O. Bevens filed his homestead claim No. 1047, in the proper land office of the United States, for the said land; which homestead claim was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(b) On June 18th, 1877, the proper officers of the United States issued a patent, in due form, purporting to convey the said land to the defendant as part and

portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the homestead filing, hereinbefore set forth, excepted the said land from the lands granted by the said Act of July 25th, 1866.

(c) On February 28th, 1891, the defendant sold, and by deed bearing that date conveyed, the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of the said section 3, unto Thomas O. Bevens; which sale and purchase were made in good faith, for full value of the said land at the time of sale, without notice to the said purchaser other than such presumptive notice as is given by the law of the existence of the said homestead filing.

(d) On February 18th, 1891, the defendant sold, and by deed bearing that date conveyed, unto J. H. Watson and Thomas O. Bevens, the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of the said section 3; which sale and purchase were made in good faith, for full value of the said land at the time of sale, without notice to the said purchasers other than such presumptive notice as is given by the law of the existence of the said filing.

Item. 23. Lot 8 of section 15, township 23 south, range 7 west, is part of an odd section of unoffered land within the primary limits of the grant made by the said Act of July 25th, 1866, and is opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with and approved by the Secretary of the Interior on March 29th, 1870.

(a) On October 30th, 1887, one John Morin filed his

pre-emption declaratory statement No. 1167, in the proper land office of the United States, for the said lot; which declaratory statement was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph was filed and approved; but final proof or payment was never tendered or made, under or in pursuance of the said filing.

(b) On September 15th, 1868, one William A. Mills, filed his pre-emption declaratory statement No. 1238, in the proper land office of the United States, for the said lot; which declaratory statement was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered or made, under or in pursuance of the said filing.

(c) On December 3d, 1894, the proper officers of the United States issued a patent, in due form, purporting to convey the said lot to the defendant as part and portion of the lands granted by the said Act of July 25th, 1866; which patent was duly and properly issued unless the pre-emption declaratory statement of William A. Mills, hereinbefore set forth, excepted the said lot from the lands granted by the said Act of July 25th, 1866.

Item. 24. The grant made by the said Act of July 25th, 1866, is in course of adjustment by the Secretary of the Interior and the proper officers of the United States, but has not been finally adjusted; and, including all the lands described in the bill of complaint herein,

the defendant has not received the full quantity of land promised in the grant made by the said Act of July 25th, 1866.

Item 25. It is further agreed that this stipulation is, and shall always be deemed, conclusive evidence, for the purposes of this suit, of the truth of all the matters and the things in its stipulated and agreed to be true, as fully and effectually as if each and all of such matters and things were, or had been, conclusively proven by the introduction and the testimony of witnesses; but each party reserves the right to introduce further and additional testimony and evidence.

Dated and signed on June 3, 1902.

JOHN K. RICHARDS,
Acting Attorney General
WM. D. FENTON and
WM. SINGER, Jr.,

Attorneys for the Defendants.

JOHN H. HALL,
United States Attorney.

Filed June 13th, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 22d day of September, 1902, there was duly filed in said court, a stipulation to correct stipulation of facts, in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

UNITED STATES OF AMERICA,	}	Case No. 2657.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

Stipulation to Correct Stipulation of Facts.

It is mutually agreed that an order may be entered directing the clerk of this court to correct the "Stipulation of Facts" on file herein, as follows:

1st. By striking from "Item 15," paragraph "(a)," in line 14, the words "filed and."

2d. By striking from "Item 19," paragraph "(a)," in line 7, the words "filed and."

3d. By striking from "Item 23," paragraph "(a)," in lines 9 to 12 inclusive, the words, "which declaratory statement was on file and of record, uncanceled, in the said land office, at the time the map referred to in the next preceding paragraph was filed and approved."

Dated and signed on Sept. 22, 1902.

JOHN H. HALL,
United States Attorney for Oregon.
WM. D. FENTON and
WM. SINGER, Jr.,
Attorneys for the Defendant.

Filed September 22d, 1902. J. A. Sladen, Clerk,
United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 3d day of December,
1902, there was duly filed in said court, a stipula-
tion of additional facts, in words and figures as fol-
lows, to wit:

United States Circuit Court, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

Defendant.

Case No. 2657.

Stipulation of Additional Facts.

It is stipulated and agreed that the following is a true and correct statement of the consideration prices received by the defendant for the several land sales set forth in the "Stipulation of Facts" heretofore filed in this cause; that is to say:

1. Lot 1 of section 15, township 3 south, range 1 east, was sold and conveyed as set forth in Item 11, paragraph "c" of the said stipulation of facts, for the full consideration sum or price of twenty-seven dollars and eighty cents (\$27.80), paid unto the defendant.

2. The W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9, township 5 south, range 1 east, was sold under credit contract, as set forth in Item 12, paragraph "c" of the said stipulation of facts. The agreed purchase price was and is two hundred and forty (240) dollars, of which fifty-six (56) dollars only has been paid to the defendant.

3. The SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 3, township 2 south, range 2 east, was sold and conveyed as set forth in Item 14, paragraph "c" of the said stipulation of facts, for the full consideration sum or price of one hundred and eight (108) dollars, paid unto the defendant.

4. The SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 21, township 4 south, range 2 east, was sold and conveyed as set forth in Item 15, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest, of one hundred and twelve dollars and forty-five cents (\$112.45), paid unto the defendant.

5. The NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 21, township 4 south, range 2 east, was sold and conveyed as set forth in Item 15, paragraph "d" of the said stipulation of facts, for the full consideration price of seventy-two (72) dollars, paid unto the defendant.

6. Lot 1 of section 7, township 5 south, range 2 east, was sold and conveyed as set forth in Item 16, paragraph "c" of the said stipulation of facts, for the full

consideration price, principal and interest, of eighty-four dollars and thirty-seven cents (\$84.37), paid unto the defendant.

7. The SW. $\frac{1}{4}$ of section 1 south, range 3 east, was sold and conveyed as set forth in Item 17, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest, of three hundred and ninety-three dollars and ninety-two cents (\$393.92), paid unto the defendant.

8. The SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 35, township 2 south, range 2 west, was sold and conveyed as set forth in Item 18, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest, of two hundred and twelve dollars and fifty-six cents (\$212.56), paid unto the defendant.

9. The E. $\frac{1}{2}$ of NW $\frac{1}{4}$ of section 19, township 2 south, range 2 west, was sold and conveyed as set forth in Item 19, paragraph "c" of the said stipulation of facts, for the full consideration price of one hundred and ninety (190) dollars, paid unto the defendant.

10. The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of section 19, township 2 south, range 2 west, was sold and conveyed as set forth in Item 19, paragraph "d" of the said stipulation of facts, for the full consideration price, principal and interest, of five hundred and twenty-four dollars and ten cents (\$524.10), paid unto the defendant.

11. The W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 35, township 9 south, range 3 west, was sold and conveyed as set forth in Item 20, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest,

of five hundred and seventy-three dollars and fourteen cents (\$573.14), paid unto the defendant.

12. The N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 9, township 18 south, range 5 west, was sold and conveyed as set forth in Item 21, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest, of six hundred and twenty dollars and twenty-six cents (\$620.26), paid unto the defendant.

13. The SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3, township 10 south, range 6 west, was sold and conveyed as set forth in Item 22, paragraph "c" of the said stipulation of facts, for the full consideration price, principal and interest, of three hundred and twenty-four dollars and thirty cents (\$324.30), paid unto the defendant.

14. The SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3, township 10 south, range 6 west, was sold and conveyed as set forth in Item 22, paragraph "d" of the said stipulation of facts, for the full consideration price, principal and interest, of two hundred and twenty-six dollars and fifty cents (\$226.50), paid unto the defendant.

Dated and signed on November 20th, 1902.

JOHN H. HALL,

United States Attorney for Oregon.

WM. D. FENTON and

WM. SINGER, Jr.,

Attorneys for Defendant.

Filed December 3d, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 3d day of December, 1902, there was duly filed in said court, a stipulation excepting certain lands, in words and figures as follows, to wit:

In the Circuit Court of the United States, for the District of Oregon.

UNITED STATES OF AMERICA, Complainant, vs. THE OREGON AND CALIFORNIA RAILROAD COMPANY, Defendant.	}	Case No. 2657.
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Stipulation Extending Certain Lands.

It is hereby stipulated and agreed by and between the parties hereto that the following described lands claimed by the Government in its bill of complaint herein, shall be excepted from said suit, and that the United States will make no further claim to the same, and the title thereof may be confirmed in the defendant above named; said lands being described as the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$, section 11, township 39 S., R. 2 E., same having been patented by the United States to defendant on the 16th day of March, 1896. Also the northeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$, the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$, and the west $\frac{1}{2}$ of section 5, township 23 S., R. 5 W., the same

having heretofore been patented by the United States to defendant.

JOHN H. HALL,
Attorney for United States.

WM. SINGER, Jr., and
WM. D. FENTON,

Attorneys for Oregon and California Railroad Company.

Filed December 3d, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 3d day of December, 1902, there was duly filed in said court, a stipulation submitting case in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

Defendant.

Case No. 2657.

Stipulation Submitting Case.

It is stipulated and agreed, that this case may be submitted on the pleadings, stipulation of facts, stipulation of additional facts, papers on file and orders made in the case, and briefs to be filed within sixty days by

the complainant and within sixty days thereafter by the defendant.

Dated and signed December 20th, 1902.

JOHN H. HALL,
United States Attorney for Oregon.

WM. D. FENTON, and
WM. SINGER, Jr.,
Attorneys for the Defendant.

Filed December 3d, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Monday, the 12th day of December, 1904, the same being the 61st judicial day of the regular October term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States, for the District of Oregon.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,
Defendant.

No. 2657.
Dec. 12, 1904.

Decree.

This cause having heretofore come regularly on for trial, complainant appearing by John H. Hall, United

States Attorney and defendant appearing by W. D. Fenton and William Singer, Jr., the case was then submitted on a stipulated statement of facts signed by the parties and upon written briefs, and was by the Court taken under advisement until this time. Now, at this time the Court being fully advised as to the law and facts—

It is ordered, adjudged and decreed, that complainant have and recover of and from the defendant the sum of \$1,010.35 as the value at \$1.25 per acre of the following described real property to wit:

Lot 1, Sec. 15, Tp. 3 S., R. 1 E., containing 22.28 acres; W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 9, Tp. 5 S., R. 1 E., containing 80 acres; S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 3, Tp. 2 S., R. 2 E., containing 40 acres; S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 21, Tp. 4 S., R. 2 E., containing 80 acres, and Lot 1, Sec. 7, Tp. 5 S., R. 2 E., containing 26 acres; S. W. $\frac{1}{4}$ of Sec. 27, Tp. 1 S., R. 3 E., containing 160 acres; S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 35, Tp. 2 S., R. 3 E., containing 40 acres; N. W. $\frac{1}{4}$, Sec. 19, Tp. 2 S., R. 2 W., containing 160 acres; W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 35, Tp. 9 S., R. 3 W., containing 80 acres; the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 3, Tp. 10 S., R. 6 W. of the Willamette Meridian, containing 120 acres, making a total of 808.28 acres.

And it is further ordered and decreed that the United States is the owner of the title in fee simple absolute and unincumbered of the following described lands set forth in plaintiff's complaint to wit:

W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 13, Tp. 6 S., R. 1 E. of the Willamette Meridian and Lot 8 of Sec., 15, Tp. 23 S., of R. 7 W. of the Willamette Meridian; and the patents

heretofore issued by the proper officers of the United State as set forth in plaintiff's complaint be, and the same are hereby, annulled, canceled, set aside and held for naught,

And it is further ordered and decreed, that defendant, its agents, servants and successors in interest are hereby forever enjoined and restrained from having or claiming to have any title, interest or estate, adverse to that of the United States in and to said lands, or any part thereof.

And it is further ordered, adjudged and decreed, that the title to the N. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of Sec. 9, Tp. 18 S. of R. 5 W. of the Willamette Meridian is hereby confirmed in defendant, and that the plaintiff hath no interest or title therein,

And it is further ordered and decreed that complainant have and recover of and from defendant its costs and disbursements of this suit taxed at \$——; and that execution issue therefor.

CHARLES B. BELLINGER,

Judge.

Filed December 12th, 1904. J. A. Sladen, Clerk,
United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 12th day of December, 1904, there was duly filed in said court, an opinion, in words and figures as follows to wit:

In the Circuit Court of the United States, for the District of Oregon.

UNITED STATES OF AMERICA,	}	Case No. 2657.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

Opinion.

JOHN H. HALL, for the Government,
WM. D. FENTON and WM. SINGER, Jr., for the Defendant.

BELLINGER, J.—This is a suit to cancel patents, alleged to have been erroneously issued, for lands within the place limits of the grant of lands to the defendant company, made by Congress on July 25, 1866 (14 Stats. at Large, 239), and to recover the price of such of the lands so patented as may have been sold by the defendant to bona fide purchasers. The grant was of every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten such sections on each side of the line of road, and it provided that when any of said alternate sections should be found to have been “granted, sold, reserved, occupied

by homestead settlers, pre-empted, or otherwise disposed of," other lands in lieu thereof, designated by odd numbers and within ten miles of the limits of the first named sections, should be selected.

The particular lands in dispute are alleged to have been excepted from the grant, by reason of homestead and pre-emption claims subsisting at the time it became effective. There is one cash entry claimed, but it is alleged in the answer, and the fact seems to be conceded, that this entry was canceled, and there is no contention in the case respecting it.

There is also a claim, that of J. W. Dougherty, arising under the donation law. Dougherty's donation notification was filed on February 14, 1855. This claim was of record and uncanceled when the map of definite location was filed, but neither final proof nor payment had been made. The stipulation of facts is silent as to whether Dougherty was residing upon this donation at the time the map of definite location of defendant's road was filed, and without such residence the claim was abandoned. Final proof or continued residence was necessary to the life of this donation. The former is negatived by the stipulation of facts, and there is no presumption in favor of the latter. (*O. & C. R. R. Co. vs. United States*, 190 U. S. 186.) The facts relied upon to except the particular land from the grant must be shown, and in this case they are not shown.

Upon one of the parcels of land in question there were filed two pre-emption declaratory statements—one by John Morin on October 20, 1867, and one by Wm.

A. Mills on September 15, 1868. The amended stipulation of facts, as to the Morin filing, is that final proof or payment was never made or tendered under the filing made. The first stipulation of facts as to this pre-emption claim was that the declaratory statement was on file and of record, uncanceled at the time the map of definite location was filed. From the amended stipulation of facts, it must be presumed that the declaratory statement in question was canceled prior to the filing of the map, a fact which explains the later filing by Mills, so that further reference to Morin's filing is unnecessary.

There are seven pre-emption and four homestead claims relied upon by the Government to take the lands claimed out of the railroad grant. From the stipulation of facts, it appears that in all these cases the lands claimed have been sold by the company to bona fide purchasers, and there is no claim of interest in any of the original claimants, the contention being that, because of these claims, the grant did not attach to the particular parcels, and that upon the subsequent abandonment of these pre-emption and homestead claims, the land covered by them reverted to the Government.

It is argued for the railroad company that the lands upon which mere pre-emption filings, have been made are not pre-empted lands and within the exception of the grant, and the cases of *Hutchins vs. Low* 15 Wall. 77; *Frisbie vs. Whitney*, 9 Wall. 187, and *Buxton vs. Travers*, 130 U. S. 232 are cited to the effect that "Until payment and entry the Acts of Congress give to the

settler only a privilege of pre-emption in case the lands are offered for sale in the usual manner; that is, the privilege to purchase them in that event in preference to others."

The first of these cases was one where there was a settlement on unsurveyed lands in the State of California, with the intention on the part of the settler to acquire the same under the pre-emption laws of the United States. Thereafter Congress passed an Act granting to the state of California a tract of land for public use, resort and recreation, which included the land so settled upon. It was held, following the earlier case of *Frisbie vs. Whitney*, that mere occupation and improvement of any portion of the public lands, with a view to pre-emption, do not confer upon the settler any right in the land occupied, as against the United States, or impair in any respect the power of Congress to dispose of the land in any way it may deem proper, and that this power in Congress only ceases when all the preliminary acts, prescribed by those acts for the acquisition of the tile, including the payment of the price of the land, have been performed by the settler. These cases are commented upon and approved in the later case of *Buxton vs. Travers*, where it is decided in effect, that if a settler upon unsurveyed lands, within a specified time after the surveys are made, makes application to purchase, that is, files a declaratory statement such as is required when the surveys have preceded settlement, and performs certain other acts prescribed by law, including the payment of its price, he acquires for the

first time a right of pre-emption to the land, that is a right to purchase it in preference to others.

It does not follow from what is decided in these cases, that the word "pre-empted" as used in excepting lands from railroad or other grants is necessarily restricted to such lands as have been paid for. The cases cited did not involve the definition to be given the word "pre-empted." The question decided was that mere occupation and improvement of unsurveyed lands with a view to pre-emption, conferred upon the settler no right as against the United States, and did not impair the power of Congress to dispose of the land settled upon in any way it might deem proper. The question to be decided in this case is, whether the exception out of the grant in question of "pre-empted" lands included lands upon which pre-emption filings have been made and accepted by the land office in compliance with the laws relating to pre-emptions.

The defendant refers to the several acts granting lands to the Union and Central Pacific Railroad Companies, the Texas Pacific, Northern Pacific, Atlantic and Southern Pacific, and the Oregon Central Railroad Company, as to which it has been uniformly held that lands covered by pre-emption filings were within the exceptions from the grants of "pre-emption or other claims," "pre-emption or homestead rights," and lands "to which a pre-emption or homestead claim is found attached." The difference between these exceptions and that under consideration is urged to show that the lands covered by pre-emption filings were subject to the

defendant's grant and properly patented to the company. But it is a rule of statutory construction, that statutes having similar objects are to be construed alike, and so the construction which has been put upon acts of similar subjects, even though the language should be different, should be referred to. (Endlich on Interpretation of Statutes, sec. 52.) These statutes taken together disclose the policy of the Government in making exceptions of lands from railroad grants. It is against sound policy that the settlement and consequent development of the country should be retarded by withholding large portions of the public lands from settlement under the pre-emption and homestead laws until such time as it can be known by the location of the lines of the aided railroads whether the grants will attach to them. The public inconvenience that would result from the withdrawal of all the alternate odd-numbered sections of public land to await the location of a land grant railroad, is illustrated in the present case. This grant was made in 1866. The first, second, and third sections of the road were located in the years 1870-1871. The maps of location of the remaining seven sections were filed in 1882, 1883, and 1884. Prior to the location of the line of road, the limits of the grant could not, of course, be known, and upon the construction of this statute contended for by the defendant, an intended pre-emptioner, who had settled upon and improved his pre-emption claim, as he is required to do before he can file his declaratory statement, would run the risk of being cut off in his right notwithstanding

the utmost diligence on his part. Such a result would be contrary to the established policy of the Government and would result in a sacrifice of public interests. The considerations for this particular grant and the conditions relating to it were the same as in the other grants, and I am of the opinion that Congress intended at least the same exception in respect to pre-emption and homestead rights and claims in this case that it did in the others. I therefore interpret the word "pre-empted" used to designate land excepted from the grant in the act of July 25, 1866, to mean lands upon which pre-emption filings were made and accepted in conformity with law. The stipulation of facts does not state that these pre-emption claimants had settled upon and improved the lands covered by the pre-emption claims, but this must be presumed, inasmuch as the law does not permit the filing of declaratory notices without proof of such settlements and improvements.

The grant excepts lands occupied by "homestead settlers." It does not appear that the homestead claims relied upon were those of settlers, and there is no exception in terms in favor of homestead claimants, not settlers. I assume that this exception was intended to provide for persons who had settled upon the public lands, intending to enter the same as homesteads, but had not made the showing and application before the local land office and the payment necessary to give them a right under the homestead laws. (The latter act of 1872, R. S., section 2315, provides for settlers of this

class.) It does not follow that Congress intended to grant the lands of homesteaders, not settlers, who had fully complied with the law. Settlement is not a prerequisite to a homestead filing. A person qualified to become a homesteader is permitted to make his homestead application to the register of the local land office upon making the prescribed affidavit, and upon payment of a fee of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres. When the offer thus made has been accepted by the filing of the required affidavit and the homestead application, and by the payment of the fee provided for, the applicant has acquired a vested right. The lands covered by the homestead application are "disposed of" within the exception in the grant. But whether within that exception or not, such lands are not subject to disposition by Congress in violation of the obligation which the Government has assumed to issue the patent to which the homesteader is "entitled" upon proof of the subsequent residence and cultivation required by law.

Two of the homestead applications in the case were made after the map of definite location was filed in the office of the Secretary of the Interior, and before approval by that office. The exception in the grant to the Northern Pacific Railroad Company was of lands not reserved, etc., "at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office," In the grant to the defendant company the exception is with reference

to the time when the company "shall file in the office of the Secretary of the Interior a map of the survey of said railroad," at which time it is provided that "the Secretary of the Interior shall withdraw from sale public lands herein granted," etc. The Supreme Court, construing the former of these grants, held that no right attached to any specific section until the road was definitely located and the map thereof filed and accepted. (*N. P. R. R. Co. vs. Saunders*, 166 U. S. 620; *U. S. vs. O. & C. Railroad Co.*, 176 U. S. 44.) There is nothing to distinguish the two grants so far as the effect that is to be given to the filing of the map of location is concerned. The construction that requires acceptance of the location as filed applies with equal force in each case. The grant, therefore, did not attach to the lands upon which homestead applications were made between the filing of the map of definite location and its approval by the Secretary of the Interior.

The act of March 3, 1887, provided for the cancellation of patents wrongfully issued to railroad companies, for the issue of new patents to innocent purchasers, and for the recovery from such companies of the Government price for the lands so patented and sold. I conclude, contrary to the contention of the defendant, that the United States, under this act could, after cancellation of the erroneous patent, also recover from the companies the value of the land in question, since the cancellation provided for was not to remedy the wrong done to the United States, but was a step in a proceeding adopted to protect innocent purchasers from the conse-

quences of the companies' wrongful acts. To the same effect is the Act of 1896. The confirmation of title in the good faith purchasers is intended to right the wrongs done such purchasers, at the cost of the companies responsible therefor to the extent of the Government price of the lands surrendered by the United States for that purpose. It does not ratify the wrong done to the United States, but provides relief for the innocent purchaser against its consequences at the cost of the wrongdoer. These companies will not be heard in a court of equity to say, "we did not agree to pay for these lands. We took them and sold them without right. Your remedy is against our innocent grantees to get back what we had no right to convey. You cannot ratify their title without condoning our wrong."

This construction put upon the act of 1896 does not give it a retroactive effect. The act does not create a liability, but provides a means of enforcing one already existing.

As to the contention that the case is not one of equitable cognizance, it is enough to say that suits for cancellation are of equitable cognizance, and equity having taken jurisdiction for such purpose, may go on and grant the relief of pecuniary compensation if the facts disclosed in the trial should require it. But without this, the suit is expressly authorized by the Act of 1887 as amended by implication of the act of 1896.

The United States is entitled to recover the minimum Government price for the lands covered by the pre-

emption and homestead applications named in the bill of complaint, and such will be the decree.

Filed December 12th, 1904. J. A. Sladen, Clerk,
United States Circuit Court, District of Oregon.

And afterwards, to wit, on Tuesday, the 28th day of February 1905, the same being the 127th judicial day of the regular October term of said court,—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States, for the District of Oregon.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA

RAILROAD COMPANY,

Defendant.

No. 2657.
Feb. 28th, 1905.

Amended Decree.

Now, at this day, this cause comes on to be heard upon motion of defendant to amend the decree herein heretofore entered December 12th, 1904, the complainant appearing by W. W. Banks, Assistant United States Attorney, and the defendant appearing by Wm. D. Fenton, and it appearing to the Court that the west half of the southeast quarter of section 9, township 5, south,

range 1 east, containing eighty acres, was sold by defendant for \$56.00 and no more, and that the said sum of \$56.00 and no more was paid to defendant therefor; and it further appearing to the Court that the defendant should be charged in said sum of \$56.00 instead of \$100.00, and for the remaining 728.28 acres at the rate of \$1.25 per acre:

It is therefore ordered, adjudged, and decreed, that the said original decree of December 12th, 1904, be, and the same is, hereby, amended so as to read as follows:

It is ordered, adjudged, and decreed, that complainant have and recover of and from the defendant the sum of \$966.35 as the value at \$1.25 per acre of the following described real property, to wit:

Lot 1, Sec. 15, Tp. 3 S., R. 1 E., containing 22.28 acres: SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 3, Tp. 2 S., R. 2 E., containing 40 acres; SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 21, Tp. 4 S., R. 2 E., containing 80 acres, and Lot 1, Sec. 7, Tp. 5 S., R. 2 E., containing 80 acres, and Lot 1, Sec. 7, Tp. 5 S., R. 2 E., containing 26 acres; SW. $\frac{1}{4}$ of Sec. 27, Tp. 1 S., R. 3 E., containing 160 acres; SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 35, Tp. 2 S., R. 3 E., containing 40 acres; NW. $\frac{1}{4}$, Sec. 19, Tp. 2 S., R. 2 W., containing 160 acres; W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Sec. 35, Tp. 9 S., R. 3 W., containing 80 acres; the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 3, Tp. 10 S., R. 6 W. of the Willamette Meridian, containing 120 acres, and the W. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 9, Tp. 5 S., R. 1 E., containing 80 acres at \$56.00 for said tract, making a total of 808.28 acres.

And it is further ordered and decreed, that the United States is the owner of the title in fee simple, absolute and unincumbered of the following described lands set forth in plaintiff's complaint, to wit: W. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 13, Tp. 6 S., R. 1 E. of the Willamette Meridian, and Lot 8 of Sec. 15, Tp. 23 S. of R. 7 W. of the Willamette Meridian; and the patents heretofore issued by the proper officers of the United States as set forth in plaintiff's complaint be, and the same are hereby, annulled, canceled, set aside and held for naught.

And it is further ordered and decreed, that defendant, its agents, servants and successors in interest, are hereby forever enjoined and restrained from having or claiming to have any title, interest or estate, adverse to that of the United States in and to said lands, or any part thereof.

And it is further ordered, adjudged and decreed, that the title to the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of Sec. 9, Tp. 18 S. of R. 5 W. of the Willamette Meridian is hereby confirmed in defendant and that the plaintiff hath no interest or title therein.

And it is further ordered and decreed, that complainant have and recover of and from defendant its costs and disbursements of this suit taxed at \$52.52; and that execution issue therefor.

CHARLES B. BELLINGER,

Judge.

And afterwards, to wit, on the 14th day of March, 1905,
 there was duly filed in said court, a cost-bill, in
 words and figures as follows, to wit:

*In the Circuit Court of the United States, for the District of
 Oregon.*

UNITED STATES,

vs.

OREGON AND CALIFORNIA RAIL-
 WAY COMPANY.

No. 2657.
 March 14, 1905.

Cost-Bill.

Statement of disbursements claimed by the complain-
 ant in the above-entitled cause, viz:

Clerk's fees	\$ 28.40
Marshal's fees	4.12
Costs in State Circuit Court	
Attorneys' fee	20.00
Attorney's fee for taking —— depositions. . .	
Depositions	
Examiner's fees	
Referee's fees,	
Witness' fees	
<hr/>	
Total taxed at.....	\$ 52.52

J. A. SLADEN,
 Clerk,

By G. H. Marsh,
 Deputy.

District of Oregon—ss.

I, Wm. W. Banks, Assistant United States Attorney, being duly sworn, on my oath say that I am one of the attorneys for the United States in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that said complainant is entitled to recover the same from the O. & C. R. R. Co., defendant, as I verily believe.

WM. W. BANKS.

Subscribed and sworn to before me this March 14, 1905.

J. A. SLADEN,
Clerk.

By G H. Marsh,
Deputy Clerk.

Filed March 14, 1905. J. A. Sladen, Clerk, United States Circuit Court.

And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2657.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

Petition for Appeal.

The defendant, conceiving itself aggrieved by the decree made and entered herein on December 12, 1904, and amended decree made and entered herein February 25, 1905, giving judgment for plaintiff, hereby appeals from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and files herewith its assignment of errors asserted and intended to be urged on appeal.

The defendant prays an order of this Court staying all further proceedings upon the said decree pending this appeal, upon its (defendant's) giving a good and sufficient bond to be approved by this Court.

WM. D. FENTON and
WM. SINGER, Jr.,
Attorneys for Defendant.

District of Oregon, }
State of Oregon. } ss.

Due service of the within petition for appeal is hereby accepted in said district and admitted to have been made upon complainant herein this 9th day of June, 1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, one of attorneys for defendant.

WM. W. BANKS,
Assistant United States Attorney and Attorney for
Complainant.

Filed June 9th, 1905. J. S. Sladen, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

UNITED STATES OF AMERICA,
Complainant,
vs.
OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,
Defendant. } Case No. 2657.

Assignment of Errors.

In connection with its petition for allowance of appeal herein, the defendant makes and files this assign-

ment of errors made by the Court in its decree entered herein on December 12, 1904, and amended decree made and entered herein February 25th, 1905.

I.

1st. That except in so far as this is a suit brought to cancel a patent for the W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 13, township 6 south, range 1 east, and Lot 8 of section 15, township 23 south, range 7 west, this is an action at law, in assumpsit; and the Court erred in assuming jurisdiction of such other separate and independent subject matters, because presented in the guise of a bill in equity.

II.

2d. That the Court erred in holding, adjudging or decreeing that the word "pre-empted," used in the Act of Congress of July 25th, 1866, granting lands to the defendant, to designate lands excepted from that grant, meant or included lands for which mere pre-emption declaratory statements had been filed.

3d. That the Court erred in holding, adjudging or decreeing that lands covered by pre-emption declaratory statement filings at time of definite location of the defendant's railroad, were by such mere filings excepted from the defendant's grant as lands "pre-empted."

4th. That the Court erred in presuming that all, or any, persons who filed pre-emption declaratory statements for lands described in the bill of complaint herein, were settlers on or who had improved the lands filed for.

5th. That the Court erred in concluding that pre-emption declaratory statements are not permitted to be filed without proof of settlement on an improvement of the land by the person filing; and herein that the Court erred in not taking judicial notice of the Interior Department rules and regulations permitting such filings to be made without any proof.

III.

6th. That the Court erred in holding, adjudging or decreeing, that the words "occupied by homestead settlers," used in the said Act of July 25th, 1866, to designate lands excepted from the grant to the defendant, meant or included lands covered by mere homestead filings, made by persons who did not occupy and were not settlers on the lands filed for.

7th. That the Court erred in holding, adjudging or decreeing, that lands covered by homestead filings at time of definite location of the defendant's railroad, were by such mere filings excepted from the defendant's grant as lands "occupied by homestead settlers."

8th. That the Court erred in holding, adjudging or decreeing, that the words "otherwise disposed of," used in the said Act of July 25th, 1866, to designate lands excepted from the grant to the defendant, meant or included lands covered by mere homestead filings, of persons not shown to have settled on or occupied such lands.

9th. That the Court erred in holding, adjudging or decreeing, that lands covered by homestead filings at

time of definite location of the defendant's railroad, were by such mere filings excepted from the defendant's grant as lands "otherwise disposed of."

IV.

10th. That the Court erred in deciding, adjudging or decreeing, that the defendant's grant did not attach to lands for which homestead filings or pre-emption filings were made between the filing and approval of the map of definite location of the defendant's railroad.

V.

11th. That the Court erred in deciding, adjudging or decreeing that any patent issued to the defendant for lands described in the bill of complaint, was issued erroneously, inadvertently, or by mistake.

12th. That the Court erred in ordering, adjudging or decreeing that the United States is the owner, by title in fee simple absolute or otherwise of the W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 13, township 6 south, range 1 east, of lot 8, section 15 township 23 south, range 7 west, Willamette Meridian.

13th. That the Court erred in ordering, adjudging or decreeing the cancelation, annulment or setting aside of defendant's patents for the lands described in the next preceding (12th) paragraph hereof.

14th. That the Court erred in ordering, adjudging or decreeing that the defendant, its agents, servants or successors in interest, are forever enjoined or restrained from having or claiming to have any title, interest or

estate adverse to that of the United States, in and to the lands described in the 12th paragraph hereof.

VI.

15th. That the Court erred in deciding, or adjudging, that the defendant is indebted to the complainant in any sum whatever, or at all because of any demand or obligation shown by the bill of complaint or proved in the case.

16th. That the Court erred in ordering, adjudging or decreeing that complainant have or recover of or from the defendant, the sum of \$966.35, or any sum, as the value at \$1.25 per acre, or as any value, of the lands described in the said decree as containing a total of 808.28 acres, or any part thereof; with or without costs of suit.

Wherefore the defendant prays that the said decree be reversed and that the complainant's bill of complaint herein be dismissed.

WM. D. FENTON and
WM. SINGER, Jr.,
Attorneys for Defendant.

State of Oregon, }
District of Oregon. } ss.

Due service of the within assignment of errors is hereby accepted in said district and admitted to have been made upon complaint herein this 9th day of June,

1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, one of attorneys for defendant.

WM. W. BANKS,
Assistant United States Attorney and Attorney for
Complainant.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards to wit on Friday, the 9th day of June, 1905, the same being the 42d judicial day of the regular April term of said court—Present, the Honorable WILLIAM B. GILBERT, United States Circuit Judge presiding—the following proceedings were had in said cause, to wit:

United States Circuit Court, District of Oregon.

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY.

Defendant.

Case No. 2657.

Order Allowing Appeal:

Having considered the defendant's petition for allowance of appeal and supersedeas from the decree made and entered herein on December 12, 1904, and amended

decree made and entered herein February 25th, 1905, together with the assignment of errors, on motion of Mr. Wm. D. Fenton, of counsel for defendant, the appeal of defendant is allowed as prayed, upon giving a bond in the sum of \$1500.00, to be approved by this Court; which bond shall operate as a supersedeas from date of its approval.

Made and entered on June ninth, 1905.

WM. B. GILBERT,
Judge.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, a bond on appeal, in words and figures as follows, to wit:

United States Circuit Court, District of Oregon.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

Defendant.

} Case No. 2657.

Bond on Appeal.

We, Oregon and California Railroad Company and R. Koehler, each of Portland, Oregon, are held and firmly bound unto the United States of America, complainant

above named, in the sum of fifteen hundred dollars, to be paid unto the said complainant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. The Oregon and California Railroad Company, defendant above named, has been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and supersedeas, from the decree entered in the above-entitled suit on December 12, 1904, and amended decree made and entered herein February 25, 1905, and the condition of this obligation is, that if the said Oregon and California Railroad Company shall prosecute its appeal to effect, and answer the costs taxed in the decree appealed from, together with all damages, interest and cost of such appeal and supersedeas, if it (defendant) fails to make its said appeals good, thence this obligation to be void, otherwise to remain in full force.

Dated and signed on June 9th, 1905.

OREGON AND CALIFORNIA RAILROAD
COMPANY. [Seal]

By R. KOEHLER,
Second Vice-President.

R. KOEHLER. [Seal]

State of Oregon, }
County of Multnomah. } ss.

R. Koehler and ———, being duly sworn, each for himself, says: I am one of the sureties to the foregoing bond, and subscribed my name thereto. I am a resident of and freeholder within the State and District of Oregon, and am worth the sum of fifteen hundred dollars, over and above all my just debts and liabilities, in property situated in said district, exclusive of property exempt from execution.

R. KOEHLER.

Subscribed and sworn to before me on June 9th, 1905.

[Seal]

R. A. LEITER,

Notary Public in and for Multnomah County, Oregon.

The foregoing bond approved on June ninth, 1905.

WM. B. GILBERT,

Judge.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court District of Oregon.

And afterwards, to wit, on the 6th day of July, 1905, there was duly filed in said court, a stipulation extending time to file transcript of record on appeal, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

UNITED STATES,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

Defendant.

No. 2657.

Stipulation Extending Time to File Transcript.

It is hereby stipulated that the time of defendant may be enlarged thirty days in which to file the transcript herein on appeal, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated July 6th, 1905.

FRANCIS J. HENEY,

United States District Attorney and Attorney for Complainant.

WM. D. FENTON,

Attorney for Defendant.

Filed July 6th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Thursday, the 6th day of July 1905, the same being the 63d judicial day of the regular April term of said court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA,	}	
Complainant,		
vs.	}	
OREGON AND CALIFORNIA RAIL-		
ROAD COMPANY.		
Defendant.	}	Case No. 2657.
		July 6th, 1905.

Order Extending Time to File Transcript.

Upon stipulation of parties herein by their respective attorneys—

It is ordered that the time of defendant in which to file the transcript on appeal herein in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged thirty days.

JOHN J. DE HAVEN,
Judge.

Clerk's Certificate to Transcript.

United States of America, }
District of Oregon. } ss.

I, J. A. Sladen, clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 3 to 133, inclusive, contain a full true, and complete transcript of the record and proceedings had in said court, in cause No. 2657, The United States of America, Plaintiff and Appellee, vs. The Oregon and California Railroad Company, Defendant and Appellant, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is seventy-five and 10/100 dollars, and that the same has been paid by said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 24th day of July, A. D. 1905.

[Seal]

J. A. SLADEN,

Clerk United States Circuit Court, District of Oregon.

[Endorsed]: No. 1225. United States Circuit Court of Appeals for the Ninth Circuit. The Oregon and California Railroad Company, Appellant, vs. The United States of America. Transcript of Record. Upon Appeal from the Circuit Court of the United States for the District of Oregon.

Filed August 4, 1905.

F. D. MONCKTON,

Clerk.

